

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



**REGULAR SESSION**

**1949**

MATHEWS PTG. & LITHO. CO., CHARLESTON, W. VA.





## FOREWORD

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This volume contains the acts of the 1949 Regular Session of the Forty-Ninth Legislature, and the resolutions adopted by the Legislature and the two Houses thereof during this session.

The 1949 Regular Session convened on January 12, and adjourned *sine die* March 12, thereby finishing its work within the sixty-day period prescribed by the State Constitution. During the session, there was a total of 679 bills introduced—401 House Bills and 278 Senate Bills. The Legislature passed 98 House Bills and 71 Senate Bills.

Of the 169 enactments of the session, the Governor approved 163 and vetoed five. The Budget Bill does not require executive action. The acts vetoed were: H. B. No. 35 (Use of two per cent tax collected by Insurance Commissioner from fire insurance companies for fire department dues account), H. B. No. 36 (Taxes paid by fire insurance companies to Insurance Commissioner to be carried in a separate fire department dues account), H. B. No. 224 (Appointment, qualifications and salary of Chief of the Department of Mines, mine inspectors, miners examining board, etc.), S. B. No. 17 (Fees of constables in civil cases) and S. B. No. 243 (Giving State Board of Education authority to employ and fix salaries of certain of its administrative, supervisory and clerical employees).

During this session there were 34 House Concurrent, 16 House Joint and 26 House Resolutions offered, of which 14 House Concurrent, 2 House Joint and 24 House Resolutions were adopted. Sixteen Senate Concurrent, 7 Senate Joint and 13 Senate Resolutions were offered, of which 11 Senate Concurrent, 1 Senate Joint and 11 Senate Resolutions were adopted.

Fifty-seven House Bills, passed by the House, failed of passage by the Senate; and 12 Senate Bills, passed by the Senate, failed of passage by the House. One Senate Bill, No. 65, went to conference, and the Committee of Conference failed to report thereon.

The only free distribution of this volume authorized is to members of the Legislature. Copies of this volume may be purchased from the State Department of Purchases.

J. R. ALIFF, Clerk,  
House of Delegates.



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# LEGISLATURE OF WEST VIRGINIA

## MEMBERS, OFFICERS AND STANDING COMMITTEES

### REGULAR SESSION, 1949

#### SENATE

#### OFFICERS

*President*—W. BROUGHTON JOHNSTON, Princeton.

*President Pro Tempore*—FRED C. ALLEN, Marlinton.

*Clerk*—J. HOWARD MYERS, Martinsburg.

*Sergeant-at-Arms*—CARROLL GREENE, Kenna.

*Doorkeeper*—GUY DOUGLAS, Lookout.

District	Name	Address
First.....	William A. Hannig (R)..... *Herbert Traubert (D).....	Elm Grove Follansbee
Second.....	*Theodore M. Bowers (R)..... Donald Van Camp (R).....	New Martinsville Middlebourne
Third.....	H. S. Boreman (R)..... *Harry E. Moate (R).....	Parkersburg Harrisville
Fourth.....	Orton R. Karickhoff (R)..... *Bartow Jones (R).....	Spencer Point Pleasant
Fifth.....	*C. H. McKown (D)..... Andrew R. Winters (D).....	Wayne Huntington
Sixth.....	*William Mitchell (D)..... Glenn Taylor (D).....	Welch Matewan
Seventh.....	*Glenn Jackson (D)..... Lloyd G. Jackson (D).....	Logan Hamlin
Eighth.....	*John E. Amos (D)..... Charles M. Love, Jr. (D).....	Charleston Charleston
Ninth.....	Eugene J. Scott (R)..... *Ward Wylie (D).....	Beckley Mulleas
Tenth.....	*W. Broughton Johnston (D)..... Forest L. McNeer (D).....	Princeton Hinton
Eleventh.....	John H. Bowling (D)..... *J. Alfred Taylor, Jr. (D).....	White Sulphur Springs Fayetteville
Twelfth.....	*Fred C. Allen (D)..... Henry J. McKinley (D).....	Marlinton Elkins
Thirteenth.....	*Floyd D. Boner (D)..... Rupert A. Sinsel (R).....	Salem, R.F.D. Clarksburg
Fourteenth.....	Don J. Eddy (D)..... *C. Howard Hardesty (D).....	Morgantown Fairmont
Fifteenth.....	*A. L. Reed (R)..... Dayton R. Stemple (R).....	Newburg Philippi
Sixteenth.....	*Ralph J. Bean (D)..... Harvey D. Beeler (R).....	Moorefield Berkeley Springs

(D) Democrats.....	20
(R) Republicans.....	12
Total.....	32

(\*) Hold-over Senators, elected in 1948, who will be members of the 1951 Legislature.



# HOUSE OF DELEGATES

## OFFICERS

*Speaker*—W. E. FLANNERY, Man.

*Clerk*—J. R. ALIFF, Fayetteville.

*Sergeant-at-Arms*—C. FRED COMBS, War.

*Doorkeeper*—ROYAL C. DAVIS, Clarksburg.

County	Name	Address
Barbour.....	Robert L. Hunt (D).....	Philippi
Berkeley.....	Stewart A. Wright (D).....	Martinsburg
Boone.....	E. E. White (D).....	Madison
Braxton.....	Doyle F. McLaughlin (D).....	Sutton
Brooke.....	A. F. Young (D).....	Wellsburg
Cabell.....	William C. Campbell (D).....	Huntington
	Mike Casey (D).....	Huntington
	W. Arch Leap (D).....	Huntington
	Ford F. Roberts (D).....	Milton
	Henry F. White (D).....	Huntington
Calhoun.....	Lewis E. Smith (D).....	Grantsville
Clay.....	Sylvester Mullins (D).....	Clay
Doddridge.....	P. Douglass Farr (R).....	West Union
Fayette.....	Joe Lilly (D).....	Oak Hill
	R. L. Matthews (D).....	Montgomery
	Earl Prather (D).....	Oak Hill
	Mrs. Nell W. Walker (D).....	Winona
Gilmer.....	Paul H. Kidd (D).....	Glenville
Grant.....	Dan W. Mouse (R).....	Pansy
Greenbrier.....	Brack L. Campbell (D).....	Rupert
	Claude E. McLaughlin (D).....	Lewisburg
Hampshire.....	William I. Powell (D).....	Romney
Hancock.....	Robert E. Roach (D).....	New Cumberland
Hardy.....	George Trumbo, Jr. (D).....	Milam
Harrieon.....	Fred H. Caplan (D).....	Clarksburg
	Sam Ellis (D).....	Clarksburg
	Fred H. Scanes, Jr. (D).....	Clarksburg
	W. Guy Tetrick (D).....	Clarksburg
Jackson.....	Bradford Sayre (R).....	Cottageville
Jefferson.....	William P. C. Perry (D).....	Charles Town
Kanawha.....	Pat Board, Jr. (D).....	Charleston
	J. Horner Davis (D).....	Charleston
	Charley Goff (D).....	Charleston
	A. V. Greenlee (D).....	Charleston
	Frank A. Knight (D).....	South Charleston
	James W. Loop (D).....	Charleston
	M. M. Maloney (D).....	Charleston
	Charles G. Peters (D).....	Charleston
Lewis.....	Rush D. Holt (D).....	Weston
Lincoln.....	Seacoe C. Isaacs (D).....	West Hamlin
Logan.....	W. E. Flannery (D).....	Man
	Jerry E. Stidham (D).....	Holden
	†Curtis B. Trent, Jr. (D).....	Logan
Marion.....	Fred L. Doring (D).....	Fairmont
	Clarence L. Hall (D).....	Fairmont
	A. James Manchlin (D).....	Farmington
Marshall.....	Karl M. Jones (D).....	Wheeling
	Thomas E. Wilkison (D).....	Moundsville

(†) Resigned as a member of the House of Delegates to become Workmen's Compensation Commissioner May 1, 1949.

## HOUSE OF DELEGATES (Continued)

County	Name	Address
Mason	George A. Rairden (R)	Leon
McDowell	J. M. Cyphers (D)	Gary
	W. L. Mills (D)	Kimball
	Harry R. Pauley (D)	Jaeger
	James L. Whitt (D)	Welch
	Bernard H. Woodyard (D)	Welch
Mercer	O. H. Ballard (D)	Princeton
	Paul S. Hudgins (D)	Bluefield
	E. H. Martin (D)	Athens
Mineral	George E. Barger (D)	Keyser
Mingo	Toney E. Cline (D)	Baisden
	Hiram Phillips (D)	Sprigg
Monongalia	Charles A. Branney (D)	Morgantown
	Ernest Richards (D)	Morgantown
Monroe	Sherman H. Ballard (R)	Peterstown
Morgan	Ward M. Dawson, Sr. (R)	Berkeley Springs
Nicholas	O. J. Carroll (D)	Summersville
Ohio	George F. Beneke (R)	Wheeling
	Russell A. Burt (D)	Wheeling
	E. J. Doyle (D)	Wheeling
	E. J. Flaccus (R)	Wheeling
Pendleton	William McCoy (D)	Franklin
Pleasants	J. C. Powell (R)	St. Marys
Pocahontas	June McElwee (D)	Marlinton
Preston	Richard Whetsell (R)	Kingwood
Putnam	Dorsel E. Smith (D)	Buffalo
Raleigh	W. A. Burke (D)	Beckley
	Robert C. Byrd (D)	Crab Orchard
	William H. File, Jr. (D)	Beckley
Randolph	Thomas P. Snelson (D)	Huttonsville
Ritchie	Harold Zinn (R)	Pullman
Roane	R. L. McCulty (R)	Spencer
Summers	C. D. McCormick (D)	Hinton
Taylor	Jack R. Nuzum (D)	Grafton
Tucker	Harold W. Shaffer (D)	Parsons
Tyler	Cecil H. Underwood (R)	Sistersville
Upshur	H. Hayden Morgan (R)	Adrian
Wayne	Jonah Adkins (D)	Ceredo
	H. T. Tucker (D)	Huntington
Webster	Carp Robinson (D)	Webster Springs
Wetzel	Herbert Schupbach (D)	New Martinsville
Wirt	H. E. Pomroy (D)	Elizabeth
Wood	Spencer K. Creel (R)	Parkersburg
	Rolla Johnston, Jr. (D)	Parkersburg
	J. Allen Overton, Jr. (R)	Parkersburg
Wyoming	C. A. Blankenship (D)	Pineville

(D) Democrats..... 68

(R) Republicans..... 16

Total..... 84

## STANDING COMMITTEES OF THE SENATE

### AERONAUTICS

Messrs. McKinley, (*Chairman*), Amos, Bean, Reed and Boreman.

### AGRICULTURE

Messrs. Bowling (*Chairman*), Allen, Boner, Jackson (of Lincoln), Taylor (of Fayette), Taylor (of Mingo), Beeler, Jones and Stemple.

### BANKS AND CORPORATIONS

Messrs. Jackson (of Logan) (*Chairman*), Allen, Bowling, Eddy, Love, Traubert, Boreman, Bowers and Scott.

### CLAIMS AND GRIEVANCES

Messrs. Love (*Chairman*), Jackson (of Lincoln), McKinley, Mitchell, Taylor (of Fayette), Jones, Karickhoff, Reed and Van Camp.

### COUNTIES AND MUNICIPAL CORPORATIONS

Messrs. Amos (*Chairman*), Allen, Eddy, Jackson (of Logan), McNeer, Mitchell, Hannig, Jones and Scott.

### EDUCATION

Messrs. McKown (*Chairman*), Bowling, Hardesty, Jackson (of Logan), Love, McKinley, McNeer, Taylor (of Fayette), Taylor (of Mingo), Boreman, Bowers, Karickhoff, Reed and Scott.

### EXAMINE CLERK'S OFFICE

Messrs. Boner (*Chairman*), McKown and Karickhoff.

### FEDERAL RELATIONS

Messrs. Traubert (*Chairman*), Bean, Boner, Jackson (of Lincoln), Taylor (of Fayette), Boreman, Karickhoff, Sinsel and Van Camp.

### FINANCE

Messrs. Hardesty (*Chairman*), Allen, Amos, Bowling, Jackson (of Logan), McKinley, McNeer, Mitchell, Taylor (of Mingo), Winters, Wylie, Beeler, Boreman, Bowers, Hannig, Karickhoff, Reed and Scott.

### FORESTRY AND CONSERVATION

Messrs. Bowling (*Chairman*), Allen, Amos, Eddy, Jackson (of Logan), McKinley, McKown, Wylie, Beeler, Hannig, Jones, Reed, Scott and Van Camp.

**FORFEITED, DELINQUENT AND UNAPPROPRIATED LANDS**

Messrs. Eddy (*Chairman*), Amos, Bean, Boner, Jackson (of Logan), McNeer, Jones, Moats and Sinsel.

**INSURANCE**

Messrs. Eddy (*Chairman*), Hardesty, Love, McKown, McNeer, Taylor (of Mingo), Karickhoff, Reed and Van Camp.

**INTERSTATE COOPERATION**

Messrs. Taylor (of Mingo), (*Chairman*), Bean, Jackson (of Logan), Bowers and Moats.

**THE JUDICIARY**

Messrs. Bean (*Chairman*), Allen, Boner, Bowling, Eddy, Jackson (of Lincoln), Love, McKown, McNeer, Taylor (of Fayette), Traubert, Wylie, Bowers, Jones, Moats, Sinsel, Stemple and Van Camp.

**LABOR**

Messrs. Eddy (*Chairman*), Boner, Bowling, McKown, Traubert, Wylie, Bowers, Moats and Stemple.

**MEDICINE AND SANITATION**

Messrs. Wylie (*Chairman*), Allen, Jackson (of Lincoln), Love, McKinley, Traubert, Boreman, Jones and Stemple.

**MILITIA**

Messrs. Mitchell (*Chairman*), Boner, Bowling, Traubert, Winters, Beeler, Bowers, Jones and Stemple.

**MINES AND MINING**

Messrs. Jackson (of Lincoln) (*Chairman*), Amos, Hardesty, Jackson (of Logan), Taylor (of Mingo), Winters, Beeler, Moats and Sinsel.

**PENITENTIARY**

Messrs. Mitchell (*Chairman*), Love, McKinley, Taylor (of Fayette), Traubert, Wylie, Moats, Stemple and Van Camp.

**PRIVILEGES AND ELECTIONS**

Messrs. Taylor (of Fayette) (*Chairman*), Amos, Boner, McKown, Mitchell, Beeler, Hannig, Karickhoff and Sinsel.

**PUBLIC BUILDINGS AND HUMANE INSTITUTIONS**

Messrs. Wylie (*Chairman*), Amos, Hardesty, Jackson (of Lincoln), Taylor (of Fayette), Taylor (of Mingo), Winters, Beeler, Hannig, Karickhoff, Sinsel and Van Camp.

## PUBLIC LIBRARY

Messrs. McKown (*Chairman*), Amos, Boner, Hardesty, Jackson (of Logan), Taylor (of Mingo), Beeler, Reed and Scott.

## PUBLIC PRINTING

Messrs. McKinley (*Chairman*), Bean, Hardesty, Love, Mitchell, Winters, Scott, Sinsel and Stemple.

## ROADS AND NAVIGATION

Messrs. Winters (*Chairman*), Amos, Bean, Bowling, Eddy, Jackson (of Lincoln), Jackson (of Logan), McKinley, McNeer, Mitchell, Wylie, Bowers, Hannig, Karickhoff, Scott, Sinsel and Stemple.

## RAILROADS

Messrs. Love (*Chairman*), Bowling, Hardesty, Jackson (of Lincoln), McKinley, McKown, Boreman, Reed and Sinsel.

## REDISTRICTING

Messrs. McNeer (*Chairman*), Allen, Mitchell, Taylor (of Fayette), Traubert, Winters, Beeler, Bowers and Sinsel.

## RULES

Messrs. Johnston (Mr. President) (*Chairman*), Allen, Bean, Hardesty, McKown, Wylie, Boreman, Hannig and Reed.

## TEMPERANCE

Messrs. Jackson (of Logan) (*Chairman*), Boner, Love, Taylor (of Fayette), Taylor (of Mingo), Winters, Hannig, Jones and Moats.

## VETERANS' AFFAIRS

Messrs. Allen (*Chairman*), Eddy, Jackson (of Lincoln), McNeer, Mitchell, Wylie, Moats, Scott and Van Camp .

## JOINT COMMITTEE ON JOINT RULES ON THE PART OF THE SENATE

Messrs. Johnston (Mr. President) (*Chairman*), Bean and Boreman.

## JOINT COMMITTEE ON ENROLLED BILLS ON THE PART OF THE SENATE

Messrs. McNeer (*Chairman*), Taylor (of Mingo), Traubert, Hannig and Van Camp.

## STANDING COMMITTEES OF THE HOUSE OF DELEGATES

### AGRICULTURE

Messrs. McLaughlin (of Greenbrier) (*Chairman*), Trumbo (*Vice Chairman*), Barger, Cyphers, Lilly, McLaughlin (of Braxton), Perry, Peters, Pomroy, Powell (of Hampshire), Smith (of Calhoun), White (of Cabell), Wright, Dawson, McCulty, Mouse and Sayre.

### BANKING

Messrs. McElwee (*Chairman*), Hall (*Vice Chairman*), Ballard (of Mercer), Campbell (of Greenbrier), Carroll, Davis, Doring, File, Hudgins, Kidd, Lilly, Matthews, Peters, Schupbach, Tetrick, White (of Boone), White (of Cabell), Wilkison, Ballard (of Monroe), Beneke, Overton and Underwood.

### CLAIMS

Messrs. Matthews (*Chairman*), White (of Cabell), (*Vice Chairman*), Campbell (of Greenbrier), Caplan, File, Greenlee, Hunt, Kidd, McElwee, McLaughlin (of Greenbrier), Pomroy, Roach, Roberts, Robinson, Schupbach, White (of Boone), Young, Farr and Mouse.

### COUNTIES, DISTRICTS AND MUNICIPALITIES

Messrs. Tucker (*Chairman*), Burke (*Vice Chairman*), Ballard (of Mercer), Burt, Byrd, Campbell (of Cabell), Doyle, Goff, Hall, Kidd, Leap, Lilly, Maloney, Nuzum, Roach, Wilkison, Woodyard, Dawson, Farr, Overton and Zinn.

### DELINQUENT LANDS

Messrs. Davis (*Chairman*), Caplan (*Vice Chairman*), Ballard (of Mercer), Campbell (of Greenbrier), Doring, Greenlee, Kidd, Knight, Leap, Pauley, Phillips, Prather, Robinson, Scanes, Tetrick, Mrs. Walker, Messrs. Wilkison, Young, Mouse, Sayre and Underwood.

### EDUCATION

Messrs. Blankenship (*Chairman*), Mullins (*Vice Chairman*), Branney, Davis, Doring, Ellis, Goff, Greenlee, Holt, Hunt, Loop, McCormick, Schupbach, Shaffer, Smith (of Calhoun), Smith (of Putnam), Snelson, Mrs. Walker, Messrs. White (of Cabell), Whitt, Young, Dawson, Powell (of Pleasants), Whetsell and Zinn.

## ELECTIONS

Messrs. Snelson (*Chairman*), Tetrick (*Vice Chairman*), Barger, Board, Byrd, Cyphers, File, Hudgins, Martin, Pomroy, Richards, Shaffer, Smith (of Calhoun), White (of Boone), Wilkison, Woodyard, Wright, Creel, Powell (of Pleasants), Rairden and Underwood.

## FINANCE

Messrs. Cline (*Chairman*), McElwee (*Vice Chairman*), Burke, Byrd, Carroll, Davis, Doyle, Ellis, Holt, Lilly, Maloney, Martin, McLaughlin (of Braxton), McLaughlin (of Greenbrier), Perry, Roberts, Schupbach, Stidham, Tetrick, White (of Boone), Ballard (of Monroe), McCulty, Powell (of Pleasants), Rairden and Underwood.

## FORESTRY AND CONSERVATION

Messrs. McCoy (*Chairman*), Powell (of Hampshire), (*Vice Chairman*), Adkins, Ballard (of Mercer), Blankenship, Cyphers, Hall, Hunt, Jones, McCormick, Mullins, Perry, Pomroy, Prather, Roberts, Smith (of Putnam), Trumbo, Tucker, Beneke, Creel, Overton and Whetsell.

## GAME AND FISH

Messrs. Hall (*Chairman*), Board (*Vice Chairman*), Burke, Ellis, Hall, Johnston, Knight, Leap, Martin, McCoy, Mullins, Nuzum, Powell (of Hampshire), Scanes, Trumbo, Tucker, Whitt, Wright, Beneke, Creel, Mouse and Whetsell.

## HEALTH

Mrs. Walker (*Chairman*), Messrs. Davis (*Vice Chairman*), Adkins, Barger, Burke, Burt, Campbell (of Cabell), Goff, Greenlee, Hall, Holt, Leap, Mullins, Pauley, Richards, Tetrick, White (of Cabell), Whitt, Wright, Young, McCulty, Powell (of Pleasants), Rairden and Whetsell.

## HUMANE INSTITUTIONS

Messrs. Phillips (*Chairman*), Johnston (*Vice Chairman*), Byrd, Davis, Doring, Doyle, Holt, Jones, Manchin, Mills, Nuzum, Powell (of Hampshire), Prather, Shaffer, Smith (of Calhoun), Snelson, Tucker, White (of Boone), McCulty, Powell (of Pleasants), Whetsell and Zinn.

## INSURANCE

Messrs. Trent (*Chairman*), Burt (*Vice Chairman*), Ballard (of Mercer), Board, Campbell (of Cabell), Carroll, Cline, Doring, Ellis, Greenlee, Kidd, Manchin, Matthews, McElwee, Peters, Powell (of Hampshire), Schupbach, Smith (of Putnam), Tucker, Whitt, Woodyard, Ballard (of Monroe), Flaccus, Morgan and Sayre.

## INTERSTATE COOPERATION

Messrs. Holt (*Chairman*), File, Trent, Morgan and Underwood.

## JUDICIARY

Messrs. File (*Chairman*), Kidd (*Vice Chairman*), Campbell (of Cabell), Caplan, Casey, Doring, Hudgins, Johnston, Knight, Loop, McCoy, Peters, Powell (of Hampshire), Roach, Trent, Tucker, Mrs. Walker, Messrs. Wilkison, Woodyard, Beneke, Farr, Morgan and Overton.

## LABOR AND INDUSTRY

Messrs. Loop (*Chairman*), Robinson (*Vice Chairman*), Adkins, Barger, Branney, Burke, Casey, Isaacs, Johnston, Jones, Knight, Manchin, Martin, Mills, Nuzum, Phillips, Prather, Richards, Scanes, Smith (of Calhoun), Smith (of Putnam), Beneke, Creel, Rairden and Sayre.

## MILITARY AFFAIRS

Messrs. Perry (*Chairman*), Whitt (*Vice Chairman*), Campbell (of Cabell), Casey, Ellis, Hudgins, Hunt, Isaacs, Jones, Loop, McCormick, Phillips, Pomroy, Prather, Trumbo, Creel, Farr, Overton and Zinn.

## MINING

Messrs. Stidham (*Chairman*), Mills (*Vice Chairman*), Adkins, Branney, Campbell (of Greenbrier), Cyphers, Hudgins, Hunt, Loop, Manchin, Pauley, Peters, Phillips, Richards, Robinson, Snelson, Tetrick, Mrs. Walker, Messrs. Dawson, Flaccus, Mouse and Whetsell.

## PENAL AND CORRECTIONAL INSTITUTIONS

Messrs. Schupbach (*Chairman*), Wilkison (*Vice Chairman*), Blankenship, Burt, Carroll, Casey, Cline, Goff, Isaacs, Jones, Leap, McLaughlin (of Braxton), McLaughlin (of Greenbrier), Perry, Roach, Smith (of Putnam), Snelson, Trent, Trumbo, Young, Dawson, Morgan, Sayre and Zinn.



## RAILROADS

Messrs. Casey (*Chairman*), McLaughlin (of Braxton) (*Vice Chairman*), Adkins, Board, Branney, Davis, File, Holt, Kidd, Maloney, McCormick, McElwee, McLaughlin (of Greenbrier), Pauley, Perry, Scanes, Trent, Woodyard, Ballard (of Monroe), Dawson, Flaccus, Underwood and Whetsell.

## REDISTRICTING

Messrs. Robinson (*Chairman*), Roberts (*Vice Chairman*), Blankenship, Board, Doyle, Knight, Lilly, Loop, Matthews, Mullins, Snelson, Stidham, Farr, Flaccus and Morgan.

## ROADS

Messrs. Kidd (*Chairman*), Carroll (*Vice Chairman*), Blankenship, Casey, Davis, Goff, Hall, Isaacs, Maloney, Martin, McCormick, McCoy, McLaughlin (of Braxton), McLaughlin (of Greenbrier), Mullins, Nuzum, Pauley, Richards, Shaffer, Smith (of Putnam), Creel, Dawson, Flaccus, Morgan and Mouse.

## RULES

Messrs. Flannery (*Chairman ex officio*), Cline, Doring, File, Schupbach, Trent, Tucker, Mrs. Walker, Messrs. Powell (of Pleasants) and Underwood.

## TEMPERANCE

Messrs. Roach (*Chairman*), Scanes (*Vice Chairman*), Adkins, Branney, Burt, Campbell (of Greenbrier), Cline, Cyphers, Doyle, Knight, Maloney, Manchin, Martin, McCoy, McLaughlin (of Braxton), Mills, Richards, Stidham, Ballard (of Monroe), Beneke, Rairden and Zinn.

## VETERANS' AFFAIRS

Messrs. Woodyard (*Chairman*), Nuzum (*Vice Chairman*), Barger, Byrd, Campbell (of Cabell), Caplan, Doyle, Isaacs, Johnston, Lilly, Manchin, Mills, Roberts, Scanes, Shaffer, Snelson, Stidham, Trent, Trumbo, Whitt, Wright, Ballard (of Monroe), McCulty, Morgan and Overton.

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

Messrs. Matthews (*Chairman*), Perry, Peters, Powell (of Pleasants) and Ballard (of Monroe).

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

Messrs. Flannery (Speaker) (*Chairman ex officio*), File and Underwood.



# LEGISLATURE OF WEST VIRGINIA

## ACTS OF 1949

### REGULAR SESSION

### CHAPTER 1

(Senate Bill No. 242—By Mr. Bean)

AN ACT to amend and reenact section five, article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the enforcement of vendor's liens and liens created by deeds of trust and mortgages on real estate.

[Passed March 11, 1949; in effect ninety days from passage. Approved by the Governor.]

#### **Article 2. Limitation of Actions and Suits.**

##### **Section**

##### **5. Enforcement of lien.**

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

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

Section 5. *Enforcement of Lien.*—No lien reserved on  
2 the face of any conveyance of real estate, or lien created  
3 by any trust deed or mortgage on real estate, shall be valid  
4 or binding as a lien on such real estate, after the expira-  
5 tion of twenty years from the date on which the original  
6 debt or obligation secured thereby becomes due, unless  
7 suit to enforce the same shall have been instituted prior  
8 to the expiration of such period; and no extension of the

9 original time of payment of such debt or obligation, or re-  
10 newal of any note or other evidence of indebtedness se-  
11 cured by such lien, or provision for such extension or  
12 renewal in such conveyance, trust deed or mortgage, shall  
13 operate to extend the limitation of twenty years herein-  
14 before provided: *Provided, however,* That the lien re-  
15 served or created as aforesaid shall continue to be valid  
16 and be enforceable, if, prior to the expiration of the said  
17 original period of limitations, the vendor or the mortgagee  
18 or the trustee or beneficiary, or their successors or assigns,  
19 shall execute and cause to be recorded in the office where  
20 the original lien instrument was recorded an affidavit  
21 setting forth the unpaid balance of the debt and interest  
22 secured by such original lien instrument. Upon the filing  
23 of such affidavit the lien of the original instrument shall  
24 continue and be enforceable for an additional period of  
25 twenty years from the date of the filing of such affidavit  
26 unless sooner released, and the clerk of the court shall  
27 cause the extension affidavit to be recorded and indexed  
28 in the same manner as the original lien instrument and  
29 shall note the fact of filing such extension affidavit on  
30 the margin of the page where the original lien instru-  
31 ment is recorded. Such affidavit shall recite the book and  
32 page of recordation of the original deed, deed of trust or  
33 mortgage. The provisions of this section shall apply, with  
34 like effect, to every such lien now existing, as well as to  
35 every such lien hereafter reserved or created.

—C—

## CHAPTER 2

(Com. Sub. for Senate Bill No. 133—Originating in the Senate Committee  
on the Judiciary)

AN ACT to amend and reenact section twelve, article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, relating to the limitation of time within which certain personal actions shall be commenced.

[Passed March 7, 1949; in effect ninety days from passage. Approved by the Governor.]

**Article 2. Limitation of Actions and Suits.****Section**

12. Personal actions not otherwise provided for.

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

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

**Section 12. Personal Actions Not Otherwise Provided**

2 For.—Every personal action for which no limitation is  
3 otherwise prescribed shall be brought (a) within two  
4 years next after the right to bring the same shall have  
5 accrued, if it be for a matter of such nature that, in case  
6 a party die, it can be brought by or against his repre-  
7 sentative; and (b) if it be for a matter not of such nature,  
8 shall be brought within one year next after the right  
9 to bring the same shall have accrued, and not after;  
10 and (c) every right of action mentioned above in clause  
11 (a) heretofore accrued shall be brought within two years  
12 hereafter or within five years from the time such action  
13 accrued, whichever shall be less.

©

## CHAPTER 3

(Senate Bill No. 118—By Mr. Love)

AN ACT to amend article four, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new section designated section fourteen-a, relating to proof of the location of reservations or exceptions contained in the instruments of title offered as evidence in any action, suit or other judicial proceeding, wherein the title to land is in controversy.

[Passed March 12, 1949; in effect from passage. Approved by the Governor.]

**Article 4. Ejectment.****Section**

14-a. Proof of the location of reservations or exceptions contained in the instruments of title offered as evidence in any action, suit

or other judicial proceeding, wherein the title to land is in controversy.

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

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

Section 14-a. *Proof of the Location of Reservations or Exceptions Contained in the Instruments of Title Offered As Evidence in Any Action, Suit or Other Judicial Proceeding, Wherein the Title to Land is in Controversy.*—

In any action, suit or other judicial proceeding involving the title to land embraced in the exterior boundaries of any patent, deed, or other writing, which reserves or excepts one or more parcels of land from the operation of such patent, deed or other writing, if there be no claim made by a party to the proceedings that the land in controversy, or any part thereof, lies within such reservation or exception, such patent, deed, or other writing, shall be construed, and shall have the same effect, as if it contained no such reservation or exception; and if any party to such proceeding claims that the land in controversy, or any part thereof, lies within such reservation or exception, the burden shall be upon him to prove the fact, and all land not shown by a preponderance of the evidence to lie within such reservation or exception shall be deemed to lie without the same.

This act shall apply in cases involving the right to the proceeds of any such land when condemned or sold, as well as in cases where the title to land is directly involved, and shall apply in any case in which the title to any part of the land, or its proceeds, but for this act, would or might be in the state.

## CHAPTER 4

(House Bill No. 401—By Mr. File and Mr. Ballard, of Monroe)

AN ACT to amend and reenact section eight, article seven, chapter fifty-five of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to the termination or abatement of action for injury upon the death of either party, to survival of action for personal injury against wrongdoer and providing the limitation of time within which such actions shall be brought against the personal representative of such wrongdoer.

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[Passed March 12, 1949; in effect from passage. Approved by the Governor.]

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## **Article 7. Actions for Injuries.**

### **Section**

8. When action not to abate; survival of action for personal injury against wrongdoer; time within which such action must be brought.

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

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

Section 8. *When Action Not to Abate; Survival of Action for Personal Injury against Wrongdoer; Time within which Such Action must be Brought.*—Where an action is brought by a person injured for damage caused by the wrongful act, neglect or default of any person or corporation, and the person injured dies pending the action, the action shall not abate by reason of his death but, his death being suggested, it may be revived in the name of his personal representative, and the declaration and other pleadings shall be amended so as to conform to an action under sections five and six of this article, and the case proceeded with as if the action had been brought under said sections. But in such case there shall be but one recovery for the same injury. And any right of action which may hereafter accrue by reason of any injury done to the person of another, and not resulting in death, by the wrongful act, neglect or default of any person, shall survive the death of the wrongdoer and may be enforced against his executor or administrator, either by reviving against such personal representative a suit which may have been brought

22 against the wrongdoer himself in his lifetime, or by  
23 bringing an original suit against his personal represent-  
24 ative after his death, whether or not the death of the  
25 wrongdoer occurred before or after the death of the in-  
26 jured party; but any such action shall be instituted within  
27 one year from the time such cause of action accrued.  
28 Nothing contained in this section shall be construed to  
29 extend the time within which an action for any other tort  
30 shall be brought, nor to give the right to assign a claim  
31 for a tort not otherwise assignable.

## CHAPTER 5

(House Bill No. 186—By Mr. McLaughlin, of Greenbrier)

AN ACT to amend and reenact section nine, article seven, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article seven by adding thereto a new section to be designated section ten, all relating to state aid for fairs.

[Passed March 3, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 7. State Aid for Fairs.

#### Section

9. Greenbrier Valley Fair designated "The State Fair of West Virginia"; ex officio members of board of directors; appropriation.
10. Appropriations specifically made available for designated exhibitions.

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

That section nine, article seven, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that said article seven be further amended by adding thereto a new section, designated section ten, all to read as follows:

Section 9. *Greenbrier Valley Fair Designated "The State Fair of West Virginia"; Ex Officio Members of Board of Directors; Appropriation.*—The corporation now known



4 as "Greenbrier Valley Fair" is hereby designated "The  
5 State Fair of West Virginia"; with the exclusive right to  
6 the use of said designation, after such amendments as  
7 may be made necessary by such change of name, if any,  
8 are made in its charter, constitution and by-laws.

9 The governor and commissioner of agriculture are here-  
10 by made ex officio members of the board of directors of  
11 said fair association for the purpose of protecting the in-  
12 terests of the state in the awarding of premiums and in  
13 the arrangement of the agriculture and other exhibits.

14 The provisions of this section shall not alter, change or  
15 alienate the rights of any other association entitled to  
16 benefits under the provisions of this article, except as to  
17 the use of the name above designated.

18 For the purpose of encouraging agriculture and indus-  
19 try, the State Fair of West Virginia shall not be limited  
20 to the appropriations authorized by section one of this  
21 article. In the event the Legislature shall appropriate a  
22 sum of ten thousand dollars or more to the State Fair of  
23 West Virginia, then and in that event the said State Fair  
24 of West Virginia shall not participate in the benefits  
25 provided in section one of this article; and nothing con-  
26 tained in this article shall be construed or interpreted  
27 to prevent the State Fair of West Virginia from receiving  
28 the benefit of any sum specifically appropriated for its  
29 use by the Legislature, to pay awards and exhibition ex-  
30 penses.

31 The commissioner of agriculture is hereby empowered  
32 to make and enforce rules and regulations for the purpose  
33 of carrying out the provisions of this section.

Sec. 10. *Appropriations Specifically Made Available for*  
2 *Designated Exhibitions.*—For the purpose of encouraging  
3 agriculture, forestry, and industries related thereto, and  
4 when appropriations are specifically set out in the budget  
5 bill by the Legislature for any annual state exhibition,  
6 when such annual exhibition is held in the interest of the  
7 public and substantially supported financially by an asso-  
8 ciation or corporation not operated for profit, the com-  
9 missioner of agriculture is hereby authorized and em-

10 powered to expend such moneys for such purposes, and  
11 nothing contained in this article shall be construed or  
12 interpreted to prevent the commissioner from paying  
13 awards to exhibitors and expenses in connection with the  
14 operation of such annual exhibition.

15 The commissioner of agriculture is authorized and em-  
16 powered to pay premiums and awards to the exhibitors  
17 of county, community and state shows of any agricultural  
18 or horticultural products when appropriations are spe-  
19 cifically made available for such purposes.

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## CHAPTER 6

(Senate Bill No. 148—By Mr. Stemple)

AN ACT to amend section one, article nine, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to communicable diseases among domestic animals.

[Passed March 9, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 9. Diseases Among Domestic Animals, General Provisions.

#### Section

##### 1. Definitions.

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

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

Section 1. *Definitions.*—The following words, as used  
2 in this article, or in any rule or regulation authorized  
3 thereunder, unless the context otherwise requires or a  
4 different meaning is specifically prescribed, shall have  
5 the following meanings:

6 (a) "Commissioner", the state commissioner of agri-  
7 culture;

8 (b) "Animal", any domestic equine or bovine animal,  
9 sheep, goat, swine, dog, cat or poultry;

10 (c) "Owner", any person who owns, leases or hires  
11 any domestic animal from another, or who allows a  
12 domestic animal habitually to remain about the premises  
13 inhabited by such person;

14 (d) "Premises", is to be taken in its widest sense, and  
15 shall include land, any structure, building, pen, coop or  
16 inclosure thereon, and any vehicle, car or vessel used in  
17 transporting passengers, goods, or animals by land or  
18 water;

19 (e) "Communicable disease", actinobacillosis, actinomy-  
20 cosis, anaplasmosis, anthrax, apthous fever (foot-and-  
21 mouth disease), aujesky's disease (mad itch), bacillary  
22 hemoglobinuria, blackleg, brucellosis (cattle, swine and  
23 goats), contagious ecthyma (sheep sore mouth), con-  
24 tagious pleuropneumonia, dourine (horses), encephalo-  
25 myelitis, equine encephalomyelitis, erysipelas (swine),  
26 glanders, hemorrhagic enteritis in swine, hemorrhagic sep-  
27 ticemia (shipping fever), hog cholera, influenza (horses  
28 and swine), infectious equine anemia, infectious keratitis,  
29 Johne's disease (paratuberculosis in cattle), laryngo  
30 tracheitis (poultry), leptospirosis, listerellosis, malignant  
31 oedema, necrobacillosis, newcastle disease (avian pneumo-  
32 nencephalitis), psittacosis, pullorum disease, pox (chick-  
33 en, cow, swine and horse), Q fever, rabies, rinderpest,  
34 Rocky Mountain spotted fever (in rodents and dogs),  
35 samonellosis, scabies (mange—in all species), tick fever,  
36 tularemia, trichinosis, trichomoniasis, tuberculosis, vesi-  
37 cular exanthema (swine), vesicular stomatitis, vibrio  
38 foetus, X-disease (hyperkeratosis), or any other disease  
39 which has been or may hereafter be adjudged and pro-  
40 claimed by the commissioner or the bureau of animal in-  
41 dustry of the United States department of agriculture  
42 to be contagious, infectious or otherwise transmissible  
43 or communicable.

## CHAPTER 7

(House Bill No. 8—By Mr. Casey and Mr. Campbell, of Cabell)

AN ACT authorizing and directing the state treasurer to apportion between the city of Huntington and the board of park commissioners of the city of Huntington the share of the city of Huntington in the special fund for aid to municipalities in receipts from the state liquor commission as provided under section nineteen, article three, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, relating to the disposition of receipts of the state liquor control commission in part for reimbursement of municipalities as amended by chapter seventy-one, acts of the Legislature, regular session, one thousand nine hundred forty-one.

[Passed February 22, 1949; in effect July 1, 1949. Approved by the Governor.]

### Section

1. Division of fund for aid to municipalities from receipts of state liquor control commission between city of Huntington and Huntington board of park commissioners.

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

- Section 1. *Division of Fund for Aid to Municipalities from Receipts of State Liquor Control Commission Between City of Huntington and Huntington Board of Park Commissioners.*—The state treasurer in apportioning money in the special fund for aid to municipalities established under section nineteen, article three, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter seventy-one, acts of the Legislature, regular session, one thousand nine hundred forty-one, shall hereafter apportion that part of said fund allocated to the city of Huntington and pay one-tenth thereof to the board of park commissioners of the city of Huntington and nine-tenths thereof to the city of Huntington: *Provided, however,* That no more than ten thousand dollars shall be allocated to the board of park commissioners in any one year.

## CHAPTER 8

(House Bill No. 156—By Mr. Speaker, Mr. Flannery)

AN ACT to amend and reenact section nineteen, article three, chapter sixty of the code of West Virginia, as last amended by chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred forty-seven, relating to the operating and reserve funds and other moneys of the state liquor control commission, and providing for payments to municipalities for the purpose of reimbursing municipalities for their expenditures in enforcing state laws for the protection of life and property.

[Passed February 15, 1949; in effect July 1, 1949. Approved by the Governor.]

### Article 3. Sales by Commission.

#### Section

19. Amount of operating and reserve fund; payments to municipalities for reimbursement of expenditures in enforcing state laws; disposition of excess.

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

That section nineteen, article three, chapter sixty of the code of West Virginia, as amended by chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred forty-seven, be amended and reenacted to read as follows:

- Section 19. *Amount of Operating and Reserve Fund; Payments to Municipalities for Reimbursement of Expenditures in Enforcing State Laws; Disposition of Excess.*—All moneys collected by the commission shall be credited to the operating fund until that fund reaches an amount sufficient for the current and routine requirements of the department, this amount to be fixed by the commission with the approval of the governor, and not to exceed at any time the sum of one million five hundred thousand dollars. The receipts in excess of the requirements of the operating fund shall be paid into the reserve fund until the amount of the reserve fund equals three hundred fifty thousand dollars.
- From receipts in excess of the requirements of the operating and reserve funds, the sum of fifty thousand dol-

lars shall, upon requisition of the governor, be paid monthly into the state treasury and credited to a special fund to be established for the purpose of state payments to municipalities. During the biennium beginning on the first day of July, one thousand nine hundred forty-nine, from receipts in excess of the above requirements, the further sum of one hundred thousand dollars, as additional temporary relief for municipalities, shall, upon requisition of the governor, be paid quarterly into the state treasury and credited to such special fund. The money in such fund shall be apportioned by the treasurer among the incorporated municipalities of the state on the basis of population, determined as follows:

(a) If the municipality be one that was in existence at the time of the taking of the last preceding federal decennial census, the population as shown by that census shall be the basis.

(b) If the municipality be one that was created subsequent to the taking of the last preceding federal decennial census, ninety-five per centum of the population shown by the census taken in pursuance of section three, article two, chapter eight of this code shall be the basis.

(c) If the municipality be one into which additional area has been taken pursuant to law subsequent to the time of the fixing of the basis for that municipality, ninety-five per centum of the population of the additional area added to the population theretofore fixed as the basis for that municipality shall thereafter be the basis.

No payments shall be made to any municipality on a basis including population within any such additional area unless and until the governing body of the municipality shall request the state treasurer, in writing, to cause to be taken a census of the population in the additional area, and until after such census shall have been completed. Upon receiving such request the state treasurer shall appoint two enumerators to take such census, who shall be residents of the county in which the additional area, or some part of it, is situate. Such census shall be taken as of the first day of the calendar month in which the taking of the census is commenced, and shall exhibit the names of all persons who were residents of

57 such additional area on that day. There shall be annexed  
58 to the census the affidavit of the enumerators, setting  
59 forth that due care was exercised in the taking of the  
60 census and that it does not contain any inaccuracy of  
61 which the affiants have knowledge. The enumerators shall  
62 each be paid as compensation the sum of fifty dollars if  
63 the population in additional area does not exceed one  
64 thousand, and, if it exceed one thousand, then twenty-five  
65 dollars for each additional five hundred or part thereof  
66 in excess of one hundred. The state treasurer shall pay  
67 the compensation of the enumerators out of the special  
68 fund mentioned in this section and shall deduct the  
69 amount so paid from the next payment made by the state  
70 treasurer to the municipality.

71 The amounts paid to municipalities are paid for the  
72 purpose of reimbursing the municipalities for their ex-  
73 penditures in enforcing state laws for the protection of  
74 life and property.

75 All receipts of the commission, not otherwise disposed  
76 of by this section, shall, upon requisition of the governor,  
77 be paid monthly into the state general revenue fund.

-C

## CHAPTER 9

(Com. Sub. for Senate Bill No. 1—Originating in the Senate Committee  
on Finance)

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

[Passed March 12, 1949; in effect from passage.]

### Title

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

### Title 1. General Provisions.

#### Section

1. Finding and general policy.
2. Definitions.
3. Classification of appropriations.
4. Method of expenditure.

5. Limitations on expenditures.
6. Maximum expenditures.

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

Section 1. *Finding and General Policy.*—The Legislature finds that estimates of funds in the treasury at the time this act is enacted, and expected revenues to accrue prior to July 1, 1949, and during the biennium 1949-51, will furnish funds sufficient to pay:

- (1) Expense of the legislature,
  - (2) Expense of the executive department,
  - (3) Expense of the judiciary department,
  - (4) Interest and principal of the debts of the state,
  - (5) Salaries payable under the constitution and laws of the state,
  - (6) Aid to public schools,
  - (7) Expenses for other purposes required by the constitution and laws of the state,
- and to meet appropriations herein made, and, in pursuance of such finding, this act is enacted.

The purpose of this act is to appropriate money necessary for economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal years one thousand nine hundred fifty and one thousand nine hundred fifty-one. To give effect to this purpose, the board of public works shall supervise the fiscal policy, control the assumption of obligations, and regulate the expenditures of the agencies of the state, to the end that same may as nearly as practicable conform to the budget document.

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

- "Board" shall mean the board of public works;
- "Spending Unit" shall mean the department, agency, or institution to which an appropriation is made;
- The "fiscal year one thousand nine hundred fifty" shall mean the period from July first, one thousand nine hundred forty-nine through June thirtieth, one thousand nine hundred fifty, and the "fiscal year one thousand nine hundred fifty-one" shall mean the period from July first, one thousand nine hundred fifty through June thirtieth, one thousand nine hundred fifty-one.



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

Sec. 3. *Classification of Appropriations.*—An appropria-  
2 tion for;

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

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

8 "Repairs and alterations" shall include all expenditures  
9 for materials, supplies and labor used in repairing and  
10 altering buildings, grounds and equipment;

11 "Equipment" shall be expended only for things which  
12 have an appreciable and calculable period of usefulness in  
13 excess of one year;

14 "Buildings" shall include construction and alteration of  
15 structures and the improvement of lands, sewer and water  
16 improvements, and shall include shelter, support, storage,  
17 protection, or the improvement of a natural condition;

18 "Lands" shall be expended only for the purchase of land  
19 or interest in lands.

20 Building and/or lands and equipment appropriations  
21 are not transferable to other items of appropriation.

22 Unclassified appropriations shall be expended only  
23 where the distribution of expenditures for different pur-  
24 poses cannot well be determined in advance or it is neces-  
25 sary or desirable to permit the spending unit freedom to  
26 spend an appropriation for more than one of the above  
27 purposes.

Sec. 4. *Method of Expenditure.*—Money appropriated by  
2 this act, unless otherwise specifically directed, shall be

3 appropriated and expended according to the provisions of  
4 article three, chapter twelve of the code of one thousand  
5 nine hundred thirty-one, or according to any law detailing  
6 a procedure specifically limiting that article.

Sec. 5. *Limitations on Expenditures.*—The expenditure  
2 of money appropriated by this act shall be limited to the  
3 specific amount appropriated to each item. There shall be  
4 no transfer of amounts between items of the appropriation  
5 of the spending unit without prior authorization by the  
6 board of public works, as provided by chapter 5, article 5,  
7 code of West Virginia.

Sec. 6. *Maximum Expenditures.*—No authority or re-  
2 quirement of law shall be interpreted as requiring or per-  
3 mitting an expenditure in excess of the appropriations set  
4 out in this act.

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### Section

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16. Appropriations to pay costs of publication of delinquent corporations.
17. Appropriations for local governments.
18. Printing costs.
19. Total appropriation.
20. General school fund.

Section 1. *Appropriations from General Revenue.*—From 2 the state fund, general revenue, there is hereby appro- 3 priated conditionally upon the fulfillment of the provisions 4 set forth in chapter thirty-nine, acts of Legislature, regular 5 session, one thousand nine hundred thirty-nine, the follow- 6 ing amounts, as itemized, for expenditures during the fiscal 7 years one thousand nine hundred fifty and one thousand 8 nine hundred fifty-one.

## LEGISLATIVE

## 1—Senate

Acct. No. 101

	Fiscal Years	
	1949-50	1950-51
1 Salaries of Members.....\$	16,000.00	\$ 16,000.00
2 To pay Clerk of the Senate		
3 for compiling and publishing		
4 the West Virginia Blue Book,		
5 including all expenses in-		
6 curred in the employment of		
7 contributors, preparation of		
8 matter, clerical hire, steno-		
9 graphic services and proof-		

10	reading .....	\$	10,000.00	\$	8,000.00
11	To pay cost of printing 1949 and				
12	1950 editions of Blue Book ..	\$	41,500.00	\$	38,500.00
13					
					<i>Fiscal Year 1948-49</i>
14	Mileage of Members.....			\$	823.30
15	Compensation and per diem of				
16	officers and attaches.....			\$	70,000.00
17	Current Expenses and Contin-				
18	gent Fund .....			\$	75,000.00
19	Joint Committee on Govern-				
20	ment and Finance and other				
21	committees .....			\$	25,000.00
22	The above appropriations for				
23	the fiscal year 1948-49 are to				
24	remain in full force and effect				
25	until the convening of the				
26	regular session of the Legis-				
27	lature, 1951.				
28	The Clerk of the Senate is				
29	authorized to draw his war-				
30	rants upon the Auditor, pay-				
31	able out of the contingent				
32	fund of the Senate, for any				
33	bills for supplies and serv-				
34	ices that may have been in-				
35	curred by the Senate and				
36	not included in the appropria-				
37	tion bill, and for bills for sup-				
38	plies and services incurred af-				
39	ter adjournment, including				
40	expenses incurred under Sen-				
41	ate Resolution No. 10, and for				
42	the necessary operation of his				
43	offices, the requisition for				
44	same to be accompanied by				
45	bills to be filed with the				
46	Auditor.				

## 2—House of Delegates

Acct. No. 102

1	Salaries of Members.....	\$	47,000.00	\$	47,000.00
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2	<i>Fiscal Year 1948-1949</i>	
3	Mileage of Members.....	\$ 2,583.80
4	Compensation and per diem of	
5	attaches and officers.....	\$ 83,280.00
6	Contingent Fund .....	\$ 85,000.00
7	Contingent Fund:	
8	Sound Amplification System	9,500.00
9	Contingent Fund:	
10	Joint Committee on Govern-	
11	ment and Finance and other	
12	Joint Committees author-	
13	ized by Concurrent Resolu-	
14	tions .....	\$ 25,000.00
15	The above appropriations for	
16	the fiscal year 1948-49 are to	
17	remain in full force and ef-	
18	fect until the convening of	
19	the regular session of the	
20	Legislature, 1951.	
21	The clerk of the House is au-	
22	thorized to draw his warrants	
23	upon the Auditor, payable	
24	out of the contingent fund of	
25	the House for any bills for	
26	supplies and services that	
27	may have been incurred by	
28	the House and not included	
29	in the appropriation bill, and	
30	for bills for supplies and ser-	
31	vices incurred after adjourn-	
32	ment, including the expendi-	
33	tures authorized by House	
34	Resolution No. 21, the requi-	
35	sition for same to be accom-	
36	panied by bills to be filed	
37	with the Auditor.	
38	An amount, not to exceed nine	
39	thousand five hundred dollars	
40	is hereby authorized to be ex-	
41	pended from the contingent	
42	fund of the House of Dele-	

43 gates for the purchase and in-  
44 stallation of a sound amplifi-  
45 cation system for the House  
46 Chamber: *Provided*, That be-  
47 fore any contract for such  
48 purchase and installation is  
49 entered into, or any expendi-  
50 ture therefor is made, the  
51 same shall be approved by a  
52 committee, composed of the  
53 Speaker and two members of  
54 the House, appointed by the  
55 Speaker, which appointed  
56 members shall not be of the  
57 same political party.

58 For duties imposed by law and  
59 by the House of Delegates,  
60 including the salary allowed  
61 by law as keeper of the rolls,  
62 the Clerk of the House of  
63 Delegates shall be paid a  
64 monthly salary at the rate of  
65 \$475.00 per month, payable  
66 from the contingent fund of  
67 the House of Delegates, and  
68 the Clerk may employ a sec-  
69 retary at a salary of not to  
70 exceed \$225.00 per month,  
71 payable monthly from the  
72 same fund.

73 During the sessions of the Leg-  
74 islature the Clerk of the  
75 House of Delegates shall keep  
76 his office open during such  
77 hours as the House may di-  
78 rect. When the Legislature is  
79 not in session the office of the  
80 Clerk of the House of Dele-  
81 gates shall be kept open as  
82 other public offices in the  
83 capitol are kept open.



84 An amount, not to exceed three  
85 thousand dollars per year, is  
86 hereby authorized to be ex-  
87 pended from the contingent  
88 fund of the House of Dele-  
89 gates for janitor service, etc.,  
90 for the House of Delegates.  
91 No expenditure for this pur-  
92 pose shall be made except on  
93 approval of the Speaker.

94 An amount, not to exceed five  
95 thousand dollars, is hereby  
96 authorized to be expended  
97 from the contingent fund of  
98 the House of Delegates by the  
99 House of Delegates Commit-  
100 tee on Rules for the purpose  
101 of establishing a House of  
102 Delegates legislative drafting  
103 office, employing, if deemed  
104 advisable by the committee,  
105 in connection therewith tech-  
106 nical and clerical assistants,  
107 who shall be available to the  
108 members and committees of  
109 the House of Delegates, at  
110 such times before and during  
111 sessions of the Legislature as  
112 may be determined by the  
113 Committee on Rules, for the  
114 purpose of assisting in the  
115 preparation and editing of  
116 bills and resolutions, and in  
117 such other legislative draft-  
118 ing and editing as the com-  
119 mittee on rules may deem  
120 proper.

### 3—*Joint Expenses*

Acct. No. 103

1 To pay the cost of legislative

2	printing and stationery, the		
3	appropriation is to be avail-		
4	able for the year ending June		
5	thirty, one thousand nine		
6	hundred forty-nine. If this		
7	work is not completed prior		
8	to June thirty, one thousand		
9	nine hundred forty-nine,		
10	then the appropriation shall		
11	continue in full until com-		
12	pleted _____	\$	97,500.00
13	Commission on Interstate Co-		
14	operation _____	\$	16,500.00

## JUDICIAL

## 4—Supreme Court of Appeals

## Acct. No. 110

1	Salaries of Judges.....	\$	62,500.00	\$	62,500.00
2	Other Personal Services.....		59,600.00		59,600.00
3	Current Expenses.....		15,325.00		15,325.00
4	Equipment .....		8,000.00		
5	Total .....	\$	145,425.00	\$	137,425.00

## 5—Circuit Courts

## Acct. No. 111

1	Salaries of Judges of the Cir-				
2	cuit Courts .....	\$	198,000.00	\$	198,000.00
3	Current Expenses .....		54,000.00		54,000.00
4	Total .....	\$	252,000.00	\$	252,000.00

## 5A—Judges' Retirement System

## Acct. No. 112

		1949-50	1950-51
		\$	\$
		25,000.00	25,000.00
1	To be transferred to the Judges'		
2	Retirement Fund, in accord-		
3	ance with the law relating		
4	thereto, upon requisition of		
5	the State Auditor.		

6—*State Law Library*

Acct. No. 114

1	Personal Services, including			
2	Salaries of Librarian and As-			
3	sistants .....	\$ 8,280.00	\$	8,280.00
4	Current Expenses .....	900.00		900.00
5	Equipment .....	5,000.00		5,000.00
6	Total .....	\$ 14,180.00	\$	14,180.00

7—*The Judicial Council*

Acct. No. 118

1	Personal Services .....	\$ 8,000.00	\$	8,000.00
2	Current Expenses .....	4,000.00		4,000.00
3	Equipment .....	1,000.00		500.00
4	Total .....	\$ 13,000.00	\$	12,500.00

8—*Auditor's Office—Criminal Charges*

Acct. No. 119

1	Criminal Charges .....	\$ 150,000.00	\$	150,000.00
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## EXECUTIVE

9—*Governor's Office*

Acct. No. 120

1	Salary of Governor .....	\$ 10,000.00	\$	10,000.00
2	Other Personal Services, includ-			
3	ing Salaries of Secretaries			
4	Stenographers and Assist-			
5	ants .....	28,480.00		28,480.00
6	Current Expenses .....	7,875.00		10,375.00
7	One hundred dollars annual			
8	dues to the Governor's Con-			
9	ference shall be included in			
10	this item.			
11	Equipment .....	*4,500.00		3,500.00
12	Civil Contingent Fund .....	150,000.00		150,000.00
13	Of this appropriation there may			
14	be expended an amount not			

15 to exceed \$5,000.00 in each  
16 year to provide instruction,  
17 care and maintenance for per-  
18 sons who are deaf and blind,  
19 and for whom the state pro-  
20 vides no facilities.

21 Out of this appropriation there  
22 may be expended, at the dis-  
23 cretion of the Governor, an  
24 amount not to exceed \$1,-  
25 000.00 in each year of the bi-  
26 ennium as West Virginia's  
27 contribution to the Interstate  
28 Oil Compact Commission.

29 Any unexpended balance re-  
30 maining in the Civil Contin-  
31 gent Fund at the close of the  
32 fiscal year 1949-50 is hereby  
33 reappropriated for expendi-  
34 ture during the fiscal year  
35 1950-51.

36 Custodial .....	\$	28,550.00	\$	31,350.00
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37 To be used for current general  
38 expenses, including compen-  
39 sation of servants and em-  
40 ployees, household mainte-  
41 nance, cost of official func-  
42 tions, and any additional  
43 household expenses occa-  
44 sioned by such official func-  
45 tions. In the event Napoleon  
46 Gardner, now and for many  
47 years in the service of the  
48 Governor and his predeces-  
49 sors in office, shall become un-  
50 able to perform such services  
51 for which he may earn com-  
52 pensation, an amount not in  
53 excess of \$50.00 per month  
54 may be expended out of this  
55 appropriation by the Gov-

56 error at his discretion, for the  
 57 use and benefit of the said  
 58 Napoleon Gardner.

59 Total .....\$ 229,405.00 \$ 233,705.00

10—*Parole and Probation Investigation and Supervision*

Acct. No. 123

1	Personal Services, including		
2	Salary of Director .....	\$ 53,300.00	\$ 53,300.00
3	Current Expenses .....	21,210.00	21,210.00
4	Equipment .....	1,000.00	1,000.00
5	Total .....	\$ 75,510.00	\$ 75,510.00

FISCAL

11—*Auditor's Office—General Administration*

Acct. No. 150

1	Salary of State Auditor .....	\$ 6,000.00	\$ 6,000.00
2	Other Personal Services .....	88,140.00	88,140.00
3	Current Expenses .....	8,000.00	8,000.00
4	Equipment .....	4,000.00	4,000.00
5	Total .....	\$ 106,140.00	\$ 106,140.00

12—*Insurance Commissioner*

Acct. No. 151

1	Personal Services .....	\$ 45,000.00	\$ 45,000.00
2	Current Expenses .....	10,000.00	10,000.00
3	Equipment .....	1,000.00	500.00
4	Total .....	\$ 56,000.00	\$ 55,500.00

13—*Treasurer's Office*

Acct. No. 160

1	Salary of State Treasurer .....	\$ 6,000.00	\$ 6,000.00
2	Other Personal Services .....	44,000.00	44,000.00
3	Current Expenses .....	6,000.00	7,000.00
4	Equipment .....	4,000.00	5,000.00
5	Total .....	\$ 60,000.00	\$ 62,000.00

14—*Sinking Fund Commission*

## Acct. No. 170

1	Personal Services .....	\$ 10,800.00	\$ 10,800.00
2	Current Expenses .....	500.00	500.00
3	Total .....	\$ 11,300.00	\$ 11,300.00

15—*State Tax Commissioner*

## Acct. No. 180

1	Salary of Tax Commissioner ....	\$ 8,000.00	\$ 8,000.00
2	Other Personal Services .....	399,190.00	399,190.00
3	Current Expenses .....	149,620.00	132,620.00
4	Equipment .....	20,000.00	7,500.00
5	Legal and Technical Services ....	15,980.00	15,980.00
6	Property Evaluation .....	25,000.00	25,000.00
7	Total .....	\$ 617,790.00	\$ 588,290.00

8 This appropriation shall include  
 9 all expenditures for the op-  
 10 eration of the Gasoline De-  
 11 partment formerly appropri-  
 12 ated from the State Road  
 13 Fund.

16—*West Virginia Board of Control*

## Acct. No. 190

1	Salaries of the three members		
2	of the Board of Control .....	\$ 18,000.00	\$ 18,000.00
3	Other Personal Services .....	39,500.00	39,500.00
4	Current Expenses .....	11,000.00	11,000.00
5	Equipment .....	1,500.00	1,500.00
6	Total .....	\$ 70,000.00	\$ 70,000.00

17—*Director of the Budget*

## Acct. No. 210

1	Personal Services, including		
2	Salary of the Director of the		
3	Budget .....	\$ 58,605.00	\$ 59,405.00
4	Current Expenses .....	7,500.00	9,000.00

5	Equipment .....	1,250.00	1,250.00
6	Total .....	\$ 67,355.00	\$ 69,655.00

18—*Director of the Budget—Inventory Control*

## Acct. No. 211

1	Personal Services .....	\$ 16,920.00	\$ 16,920.00
2	Current Expenses .....	6,000.00	6,000.00
3	Total .....	\$ 22,920.00	\$ 22,920.00

4 To be expended in cooperation  
5 with the Director of Pur-  
6 chases to establish an inven-  
7 tory control of all physical  
8 property of the state.

## LEGAL

19—*Attorney General*

## Acct. No. 240

1	Salary of Attorney General ....	\$ 7,500.00	\$ 7,500.00
2	Other Personal Services .....	42,440.00	42,440.00
3	Current Expenses .....	6,200.00	6,200.00
4	Equipment .....	2,700.00	2,700.00
5	To protect the resources or tax		
6	structure of the State in con-		
7	troversies or legal proceed-		
8	ings affecting same. Any un-		
9	expended balance remaining		
10	in this fund at the close of the		
11	fiscal year 1949-50 is hereby		
12	reappropriated for expendi-		
13	ture during the fiscal year		
14	1950-51 .....	8,000.00	8,000.00
15	Total .....	\$ 66,840.00	\$ 66,840.00

20—*State Court of Claims*

## Acct. No. 243

1	Personal Services .....	\$ 16,950.00	\$ 16,950.00
2	Current Expenses .....	3,815.00	5,815.00

3	Equipment .....	600.00	400.00
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4	Total .....	\$ 21,365.00	\$ 23,165.00
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21—*Commission on Uniform State Laws*

## Acct. No. 245

1	Total .....	\$ 500.00	\$ 500.00
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## INCORPORATING AND RECORDING

22—*Secretary of State*

## Acct. No. 250

1	Salary of Secretary of State.....	\$ 6,000.00	\$ 6,000.00
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2	Other Personal Services.....	24,980.00	24,980.00
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3	Current Expenses .....	4,000.00	4,000.00
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4	Equipment .....	1,000.00	1,000.00
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5	Total .....	\$ 35,980.00	\$ 35,980.00
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## CUSTODIAL AND SERVICE

23—*Capitol Building and Grounds*

## Acct. No. 270

1	Personal Services .....	\$ 106,350.00	\$ 111,350.00
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2	Current Expenses .....	45,000.00	45,000.00
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3	Repairs and alterations .....	40,000.00	35,000.00
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4	Equipment .....	3,650.00	3,650.00
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5	Total .....	\$ 195,000.00	\$ 195,000.00
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6	The above appropriation for		
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7	repairs and alterations shall		
---	-------------------------------	--	--

8	be expended at the discretion		
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9	of the Board of Control and		
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10	shall include all painting and		
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11	decorating for the capitol		
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12	building and the apartments		
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13	therein.		
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24—*Central Mailing Office*

## Acct. No. 280

1	Personal Services .....	\$ 11,040.00	\$ 11,040.00
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2	Current Expenses .....	91,940.00	91,940.00
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3	Equipment _____	3,000.00	200.00
4	Total _____	\$ 105,980.00	\$ 103,180.00
5	The Workmen's Compensation		
6	Commission, Department of		
7	Public Assistance and the		
8	West Virginia Public Service		
9	Commission shall reimburse		
10	the Current Expense appro-		
11	priation of the Central Mail-		
12	ing Office monthly for all		
13	meter service. Any spending		
14	unit receiving reimburse-		
15	ment for postage costs from		
16	the Federal Government shall		
17	refund to the Current Ex-		
18	pense account of the Central		
19	Mailing Office such amounts.		
20	Should this appropriation for		
21	Current Expense be insuf-		
22	ficient to meet the mailing		
23	requirements of the State		
24	spending units as set out		
25	above, any excess postage		
26	meter service requirements		
27	shall be a proper charge		
28	against the units, and each		
29	spending unit shall refund to		
30	the Current Expense appro-		
31	priation of the Central Mail-		
32	ing Office any amounts re-		
33	quired for that Department		
34	for postage in excess of this		
35	appropriation.		

## 25—Department of Purchases

## Acct. No. 290

1	Salary of Director of Pur-		
2	chases _____	\$ 6,000.00	\$ 6,000.00
3	Other Personal Services.....	57,500.00	58,280.00
4	Current Expenses _____	11,500.00	11,700.00

5	Equipment .....	2,500.00	2,500.00
6	Total .....	\$ 77,500.00	\$ 76,480.00

## EDUCATIONAL

26—*Department of Education—State Aid to Schools*

## Acct. No. 295

1	State aid to supplement the		
2	General School Fund.....	\$36,825,093.00	\$37,350,093.00
3	To be transferred to the gen-		
4	eral school fund upon the		
5	requisition of the Governor.		
6	To be distributed according		
7	to law except an amount not		
8	to exceed \$50,000.00 for each		
9	year of the biennium, which		
10	sum shall be available to the		
11	State Board of School Fi-		
12	nance to aid counties in pro-		
13	viding instruction for home-		
14	bound crippled children un-		
15	der such rules and regula-		
16	tions for instruction of home-		
17	bound crippled children as		
18	may be adopted by the State		
19	Board of Education as pro-		
20	vided by chapter 18, article		
21	2, section 5, of the West Vir-		
22	ginia code, one thousand		
23	nine hundred thirty-one, as		
24	amended.		
25	In making distribution of state		
26	aid to counties as provided by		
27	law, the state board of school		
28	finance may at its discretion		
29	increase the allocation to any		
30	county that is otherwise un-		
31	able with all available reve-		
32	nues to maintain a full nine		
33	months' term, such increase		
34	not to be greater than is re-		

35 quired to provide for a nine  
 36 months term of school on a  
 37 minimum program: *Provided*,  
 38 That the total that may be  
 39 distributed under this special  
 40 provision shall not exceed  
 41 \$100,000.00 in any year.

28—*Department of Education—Textbook Aid*

Acct. No. 297

1	Textbooks for Schools.....	\$ 150,000.00	\$ 150,000.00
2	To be distributed according to		
3	chapter 51, Acts of Legisla-		
4	ture, regular session, 1939.		

29—*Teachers Retirement Board*

Acct. No. 298

1	Benefit Fund — Payments to		
2	Retired Teachers .....	\$ 916,000.00	\$ 956,000.00
3	Expense Fund .....	35,000.00	32,000.00
4	Employer's Accumulation Fund		
5	—To match contribution of		
6	members .....	1,800,000.00	1,800,000.00
7	Reserve fund .....	200,000.00	200,000.00
8	Total .....	\$2,951,000.00	\$2,988,000.00

30—*West Virginia University*

Acct. No. 300

1	Personal Services, including		
2	Salary of President .....	\$ 3,133,475.00	\$ 3,189,270.00
3	Current Expenses .....	558,500.00	500,000.00
4	Repairs and alterations .....	261,500.00	259,500.00
5	Equipment .....	242,250.00	238,450.00
6	State aid to medical students...	40,000.00	40,000.00
7	Total .....	\$ 4,235,725.00	\$ 4,227,220.00

31—*West Virginia University—Mining and Industrial  
 Extension*

Acct. No. 301

1	Personal Services .....	\$ 44,640.00	\$ 44,640.00
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2	Current Expenses .....	18,500.00	18,500.00
3	Repairs and Alterations.....	500.00	500.00
4	Equipment .....	1,400.00	1,000.00
5	Total .....	\$ 65,040.00	\$ 64,640.00

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

Acct. No. 302

1	Personal Services .....	\$ 72,380.00	\$ 72,380.00
2	Current Expenses .....	10,800.00	10,800.00
3	Repairs and alterations .....	1,500.00	1,500.00
4	Equipment .....	1,500.00	1,500.00
5	Total .....	\$ 86,180.00	\$ 86,180.00

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

Acct. No. 303

1	Personal Services .....	\$ 22,400.00	\$ 22,400.00
2	Current Expenses .....	14,150.00	14,150.00
3	Repairs and Alterations .....	13,500.00	12,500.00
4	Equipment .....	6,600.00	4,600.00
5	Total .....	\$ 56,650.00	\$ 53,650.00

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

Acct. No. 304

1	Unclassified—Total .....	\$ 3,400.00	\$ 3,400.00
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35—*West Virginia University—Extension Division*

Acct. No. 305

1	To pay Salaries and Traveling		
2	Expenses of County Agricul-		
3	tural Agents .....	\$ 105,060.00	\$ 105,060.00
4	To Pay Salaries and Expenses		
5	of County Home Dem. Agts.	62,160.00	62,160.00
6	Total .....	\$ 167,220.00	\$ 167,220.00

36—*West Virginia University—Engineering Experiment  
Station*

Acct. No. 306

1	Personal Services .....	\$	19,250.00	\$	19,250.00
2	Current Expenses .....		2,800.00		2,800.00
3	Equipment .....		4,000.00		4,000.00
4	Total .....	\$	26,050.00	\$	26,050.00

37—*West Virginia University—Gas and Petroleum  
Research*

Acct. No. 309

1	Personal Services .....	\$	11,820.00	\$	11,820.00
2	Current Expenses .....		3,200.00		3,200.00
3	Equipment .....		2,500.00		500.00
4	Total .....	\$	17,520.00	\$	15,520.00

38—*West Virginia University—Agricultural Experiment  
Station*

Acct. No. 310

1	Personal Services .....	\$	100,130.00	\$	100,130.00
2	Current Expenses .....		14,350.00		14,350.00
3	Repairs and Alterations .....		6,150.00		3,850.00
4	Equipment .....		18,750.00		12,250.00
5	Total .....	\$	139,380.00	\$	130,580.00
6	Out of the above appropriation				
7	for Personal Services \$5,-				
8	000.00 for each year of the bi-				
9	ennium may be expended				
10	only for the employment of				
11	a Horticulturist at the Expe-				
12	riment Farm—Kearneysville.				

39—*West Virginia University—Experiment Farm—  
Kearneysville*

Acct. No. 311

1	Current Expense .....	\$	11,400.00	\$	11,400.00
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2	Repairs and Alterations .....	2,500.00	1,500.00
3	Equipment .....	22,000.00	10,000.00
4	Total .....	\$ 35,900.00	\$ 22,900.00

40—*West Virginia University—Reymann Memorial Farm*

## Acct. No. 312

1	Current Expenses .....	\$ 10,000.00	\$ 10,000.00
2	Repairs and Alterations .....	3,800.00	2,300.00
3	Equipment .....	2,500.00	1,500.00
4	Total .....	\$ 16,300.00	\$ 13,800.00

41—*West Virginia University—Ohio Valley Sub-Station*

## Acct. No. 313

1	Current Expenses .....	\$ 5,000.00	\$ 5,000.00
2	Repairs and Alterations .....	4,000.00	1,000.00
3	Equipment .....	900.00	400.00
4	Total .....	\$ 9,900.00	\$ 6,400.00

42—*West Virginia University Experiment Farm—Reedsville*

## Acct. No. 314

1	Current Expenses .....	\$ 5,650.00	\$ 5,650.00
2	Repairs and Alterations .....	3,400.00	9,000.00
3	Equipment .....	5,000.00	5,000.00
4	Total .....	\$ 14,050.00	\$ 19,650.00

43—*Potomac State School of West Virginia University*

## Acct. No. 315

1	Personal Services, including		
2	Salary of President .....	\$ 190,670.00	\$ 190,670.00
3	Current Expenses .....	31,900.00	31,900.00
4	Repairs and Alterations .....	20,400.00	20,400.00
5	Equipment .....	16,500.00	12,000.00
6	Total .....	\$ 259,470.00	\$ 254,970.00

44—*Marshall College*

## Acct. No. 320

1	Personal Services, including		
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2	Salary of President .....	\$ 1,095,790.00	\$ 1,109,200.00
3	Current Expenses .....	93,000.00	95,000.00
4	Repairs and Alterations ..	55,600.00	55,600.00
5	Equipment .....	71,660.00	71,660.00
6	Flood Wall Assessment .....	4,000.00	4,000.00
7	Total .....	\$ 1,320,050.00	\$ 1,335,460.00

## 45—Fairmont State College

## Acct. No. 321

1	Personal Services, including		
2	Salary of President .....	\$ 388,590.00	\$ 388,590.00
3	Current Expenses .....	35,780.00	36,880.00
4	Repairs and Alterations .....	24,500.00	19,500.00
5	Equipment .....	21,000.00	21,000.00
6	Total .....	\$ 469,870.00	\$ 465,970.00

## 46—Glenville State College

## Acct. No. 322

1	Personal Services, including		
2	Salary of President .....	\$ 217,210.00	\$ 217,770.00
3	Current Expenses .....	29,950.00	30,000.00
4	Repairs and Alterations .....	18,000.00	12,500.00
5	Equipment .....	19,350.00	16,950.00
6	Total .....	\$ 284,510.00	\$ 277,220.00

## 47—West Liberty State College

## Acct. No. 323

1	Personal Services, including		
2	Salary of President .....	\$ 179,910.00	\$ 179,910.00
3	Current Expenses .....	24,400.00	23,050.00
4	Repairs and Alterations .....	10,500.00	10,500.00
5	Equipment .....	10,000.00	10,000.00
6	Total .....	\$ 224,810.00	\$ 223,460.00

## 48—Shepherd College

## Acct. No. 324

1	Personal Services, including		
2	Salary of President .....	\$ 168,000.00	\$ 168,000.00

3	Current Expenses .....	25,000.00	25,000.00
4	Repairs and Alterations .....	15,800.00	15,800.00
5	Equipment .....	16,300.00	11,300.00
6	Total .....	\$ 225,100.00	\$ 220,100.00

## 49—Concord College

## Acct. No. 325

1	Personal Services, including		
2	Salary of President .....	\$ 333,200.00	\$ 334,710.00
3	Current Expenses .....	\$ 36,900.00	36,900.00
4	Repairs and Alterations .....	25,000.00	25,000.00
5	Equipment .....	30,000.00	30,000.00
6	Total .....	\$ 425,100.00	\$ 426,610.00

## 50—West Virginia Institute of Technology

## Acct. No. 327

1	Personal Services, including		
2	Salary of President .....	\$ 284,630.00	\$ 284,630.00
3	Current Expenses .....	48,600.00	48,600.00
4	Repairs and Alterations .....	20,000.00	20,000.00
5	Equipment .....	35,000.00	35,000.00
6	Total .....	\$ 388,230.00	\$ 388,230.00

## 51—West Virginia State College

## Acct. No. 328

1	Personal Services, including		
2	Salary of President .....	\$ 567,045.00	\$ 567,045.00
3	Current Expenses .....	90,910.00	91,560.00
4	Repairs and Alterations .....	52,000.00	49,700.00
5	Equipment .....	53,600.00	55,900.00
6	Total .....	\$ 763,555.00	\$ 764,205.00

## 52—Bluefield State College

## Acct. No. 329

1	Personal Services, including		
2	Salary of President .....	\$ 237,480.00	\$ 241,480.00



3	Current Expenses .....	39,600.00	39,600.00
4	Repairs and Alterations .....	24,000.00	24,000.00
5	Equipment .....	23,500.00	23,500.00

6	Total .....	\$ 324,580.00	\$ 328,580.00
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53—*West Virginia State College—4-H Camp for Colored  
Boys and Girls*

Acct. No. 330

1	Personal Services .....	\$ 11,510.00	\$ 11,510.00
2	Current Expenses .....	4,700.00	4,700.00
3	Repairs and Alterations .....	3,000.00	3,000.00
4	Equipment .....	3,200.00	3,200.00

5	Total .....	\$ 22,410.00	\$ 22,410.00
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54—*West Virginia Schools for the Deaf and Blind*

Acct. No. 333

1	Personal Services, including		
2	Salary of Superintendent ....	\$ 216,520.00	\$ 218,300.00
3	Current Expenses .....	95,000.00	95,000.00
4	Repairs and Alterations .....	22,300.00	14,800.00
5	Equipment .....	19,550.00	10,050.00

6	Total .....	\$ 353,370.00	\$ 338,150.00
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55—*West Virginia School for the Colored Deaf and Blind—*

Acct. No. 334

1	Personal Services, including		
2	Salary of Superintendent ....	\$ 31,330.00	\$ 31,330.00
3	Current Expenses .....	20,000.00	20,000.00
4	Repairs and Alterations .....	6,000.00	6,000.00
5	Equipment .....	5,000.00	5,000.00

6	Total .....	\$ 62,330.00	\$ 62,330.00
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56—*State Board of Education—Storer College*

Acct. No. 338

1	To pay Storer College for use		
2	of Plant and Facilities for		

3	West Virginia Students with			
4	the understanding that the			
5	State Board of Education can			
6	determine the need therefor.	\$ 20,000.00	\$	20,000.00

57—*Department of Archives and History*

Acct. No. 340

1	Personal Services, including			
2	Salary of State Archivist and			
3	Historian .....	\$ 16,580.00	\$	16,830.00
4	Current Expenses .....	4,315.00		4,315.00
5	Equipment .....	6,500.00		6,500.00
6	Total .....	\$ 27,395.00	\$	27,645.00

58—*West Virginia Library Commission*

Acct. No. 350

1	Personal Services .....	\$ 36,520.00	\$	36,520.00
2	Current Expenses .....	9,500.00		9,500.00
3	Equipment .....	13,500.00		500.00
4	Books and Periodicals .....	50,000.00		25,000.00
5	Total .....	\$ 109,520.00	\$	71,520.00

CHARITIES AND CORRECTION

59—*West Virginia Industrial School for Boys*

Acct. No. 370

1	Personal Services, including			
2	Salary of Superintendent .....	\$ 126,414.00	\$	126,414.00
3	Current Expenses .....	73,500.00		73,500.00
4	Repairs and Alterations .....	10,400.00		8,900.00
5	Equipment .....	9,000.00		9,000.00
6	Total .....	\$ 219,314.00	\$	217,814.00

7 Subject to Judicial determina-  
 8 tion, out of the above ap-  
 9 propriation for Personal Ser-  
 10 vices, \$600.00 shall be paid  
 11 each year in monthly install-  
 12 ments to each of the following  
 13 persons:

- 14 Lelia Arnett, widow of U. G.
- 15 Arnett, killed by an inmate
- 16 while on duty.
- 17 George A. Barnard, employee,
- 18 permanently disabled by an
- 19 inmate while on duty.

60—*West Virginia Industrial School for Colored Boys*

Acct. No. 371

1	Personal Services, including			
2	Salary of Superintendent .....	\$ 24,000.00	\$	24,120.00
3	Current Expenses .....	26,130.00		26,130.00
4	Repairs and Alterations .....	4,000.00		4,000.00
5	Equipment .....	8,350.00		4,900.00
6	Total .....	\$ 62,480.00	\$	59,150.00

61—*West Virginia Industrial Home for Girls*

Acct. No. 372

1	Personal Services, including			
2	Salary of Superintendent .....	\$ 55,590.00	\$	59,010.00
3	Current Expenses .....	44,830.00		44,830.00
4	Repairs and Alterations .....	7,900.00		7,900.00
5	Equipment .....	12,750.00		6,750.00
6	Total .....	\$ 121,070.00	\$	118,490.00

62—*West Virginia Industrial Home for Colored Girls*

Acct. No. 373

1	Personal Services, including			
2	Salary of Superintendent .....	\$ 8,036.00	\$	8,276.00
3	Current Expenses .....	9,475.00		9,475.00
4	Repairs and Alterations .....	4,600.00		2,600.00
5	Equipment .....	2,600.00		1,400.00
6	Total .....	\$ 24,711.00	\$	21,751.00

63—*West Virginia State Prison for Women*

Acct. No. 374

1	Personal Services, including			
2	Salary of Superintendent .....	\$ 23,980.00	\$	24,160.00

3.	Current Expenses .....	26,350.00	26,350.00
4	Repairs and Alterations .....	3,700.00	3,700.00
5	Equipment .....	4,700.00	4,000.00
6	Total .....	\$ 58,730.00	\$ 58,210.00

64—*West Virginia Penitentiary*

## Acct. No. 375

1	Personal Services, including		
2	Salary of Warden .....	\$ 251,520.00	\$ 262,260.00
3	Current Expenses .....	280,450.00	280,450.00
4	Repairs and Alterations .....	25,000.00	20,000.00
5	Equipment .....	30,000.00	15,000.00
6	Total .....	\$ 586,970.00	\$ 577,710.00

7 Subject to judicial determina-  
 8 tion, out of the above appro-  
 9 priation for Personal Serv-  
 10 ices, \$600.00 shall be paid each  
 11 year in monthly installments  
 12 to Ray Estep, permanently  
 13 injured while employed in  
 14 the penitentiary coal mine.

65—*Medium Security Prison*

## Acct. No. 376

1	Personal Services .....	\$ 75,180.00	\$ 75,180.00
2	Current Expenses .....	117,800.00	117,800.00
3	Repairs and Alterations .....	19,500.00	9,500.00
4	Equipment .....	30,500.00	11,000.00
5	Total .....	\$ 242,980.00	\$ 213,480.00

66—*West Virginia Children's Home*

## Acct. No. 380

1	Personal Services, including		
2	Salary of Superintendent ....	\$ 20,640.00	\$ 22,080.00
3	Current Expenses .....	17,700.00	17,700.00
4	Repairs and Alterations .....	3,300.00	1,800.00
5	Equipment .....	3,050.00	1,480.00
6	Total .....	\$ 44,690.00	\$ 43,060.00

67—*West Virginia Colored Children's Home*

## Acct. No. 381

1	Personal Services, including		
2	Salary of Superintendent ----\$	10,500.00	\$ 10,500.00
3	Current Expenses -----	12,000.00	12,000.00
4	Repairs and Alterations -----	6,000.00	2,600.00
5	Equipment -----	4,200.00	1,500.00
6	Total -----	\$ 32,700.00	\$ 26,600.00

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

## Acct. No. 382

1	Personal Services, including		
2	Salary of Superintendent ----\$	18,480.00	\$ 18,660.00
3	Current Expenses -----	32,400.00	32,400.00
4	Repairs and Alterations -----	8,000.00	8,000.00
5	Equipment -----	6,650.00	4,650.00
6	Total -----	\$ 65,530.00	\$ 63,710.00

69—*West Virginia Training School*

## Acct. No. 383

1	Personal Services, including		
2	Salary of Superintendent ----\$	65,540.00	\$ 66,980.00
3	Current Expenses -----	48,290.00	48,290.00
4	Repairs and Alterations -----	7,950.00	7,950.00
5	Equipment -----	12,350.00	9,350.00
6	Total -----	\$ 134,130.00	\$ 132,570.00

70—*Andrew S. Rowan Memorial Home*

## Acct. No. 384

1	Personal Services, including		
2	Salary of Superintendent ----\$	88,180.00	\$ 93,640.00
3	Current Expenses -----	114,225.00	114,225.00
4	Repairs and Alterations -----	10,500.00	7,500.00
5	Equipment -----	10,925.00	7,900.00
6	Total -----	\$ 223,830.00	\$ 223,265.00

## HEALTH AND WELFARE

## 71—State Health Department and Public Health Council

## Acct. No. 400

1	Personal Services, including		
2	Salary of Commissioner ————	\$ 534,993.00	\$ 552,553.00
3	Current Expenses —————	136,149.00	137,949.00
4	Equipment —————	40,950.00	41,450.00
5	Cancer Control and treatment	74,902.00	75,387.00
6	Tuberculosis Field Clinic and		
7	Nursing Service—To be ex-		
8	pended in cooperation with		
9	West Virginia Tuberculosis		
10	and Health Association .....	10,000.00	10,000.00
11	Total .....	\$ 796,994.00	\$ 817,339.00

## 72—State Water Commission

## Acct. No. 401

1	Personal Services .....	\$ 26,780.00	\$ 27,080.00
2	Current Expenses .....	15,750.00	13,250.00
3	Equipment .....	8,100.00	
4	For cooperation with the U. S.		
5	Geological Survey for a pro-		
6	gram of stream gauging .....	4,000.00	4,000.00
7	Total .....	\$ 54,630.00	\$ 44,330.00

## 73—State Committee of Barbers and Beauticians

## Acct. No. 402

1	Personal Services, including		
2	Salary of Director .....	\$ 20,000.00	\$ 20,300.00
3	Current Expenses .....	13,000.00	13,000.00
4	Total .....	\$ 33,000.00	\$ 33,300.00
5	From Collections .....	33,000.00	33,300.00

## 74—Bureau of Negro Welfare and Statistics

## Acct. No. 403

1	Salary of Director .....	\$ 3,600.00	\$ 3,600.00
2	Other Personal Services .....	8,720.00	8,720.00

3	Current Expenses .....	4,070.00	5,070.00
4	Equipment .....	275.00	275.00
5	Total .....	\$ 16,665.00	\$ 17,665.00

## 75—West Virginia Department of Veterans Affairs

## Acct. No. 404

1	Personal Services, including		
2	Salary of Director .....	\$ 132,237.00	\$ 134,237.00
3	Current Expenses .....	43,445.00	43,445.00
4	Equipment .....	2,000.00	2,000.00
5	To provide Educational Oppor-		
6	tunities for Children of War		
7	Veterans as provided by		
8	Chapter 39, Acts of the Leg-		
9	islature, 1943 .....	5,000.00	5,000.00
10	Total .....	\$ 182,682.00	\$ 184,682.00

## 76—Department of Public Assistance

## Acct. No. 405

1	Personal Services .....	\$ 877,240.00	\$ 926,800.00
2	Current Expenses .....	209,000.00	196,000.00
3	Equipment .....	17,500.00	11,400.00
4	Public Assistance Grants (Clas-		
5	sified Aid) .....	5,700,000.00	5,700,000.00
6	Aid to Crippled Children .....	350,845.00	350,845.00
7	General Medical and Hospitali-		
8	zation .....	665,400.00	665,400.00
9	Conservation of Vision and Pre-		
10	vention of Blindness .....	20,000.00	20,000.00
11	Child Welfare Services .....	65,000.00	65,000.00
12	General Relief .....	710,000.00	710,000.00
13	Boarding Care .....	420,000.00	420,000.00
14	Total .....	\$ 9,034,985.00	\$ 9,065,445.00
15	The unexpended balance, if		
16	any, remaining in the appro-		
17	priation for this department		
18	as of June 30, 1949 is hereby		
19	reappropriated for expendi-		

- 20 ture in the fiscal years 1949-  
21 50 and 1950-51.

77—Weston State Hospital

Acct. No. 420

1	Personal Services, including		
2	Salary of Superintendent .....	\$ 589,760.00	\$ 634,740.00
3	Current Expenses .....	397,900.00	397,900.00
4	Repairs and Alterations .....	25,000.00	25,000.00
5	Equipment .....	20,000.00	20,000.00
6	Total .....	\$ 1,032,660.00	\$ 1,077,640.00

78—Spencer State Hospital

Acct. No. 421

1	Personal Services, including		
2	Salary of Superintendent .....	\$ 187,600.00	\$ 203,860.00
3	Current Expenses .....	202,575.00	202,575.00
4	Repairs and Alterations .....	15,100.00	10,000.00
5	Equipment .....	9,600.00	7,900.00
6	Total .....	\$ 414,875.00	\$ 424,435.00
7	All revenue collected by the		
8	above spending unit in excess		
9	of the amount required to pay		
10	the principal and interest on		
11	outstanding Clinic Bonds		
12	shall be deposited to the State		
13	Fund—General Revenue.		

79—Huntington State Hospital

Acct. No. 422

1	Personal Services, including		
2	Salary of Superintendent .....	\$ 280,860.00	\$ 300,120.00
3	Current Expenses .....	300,000.00	300,000.00
4	Repairs and Alterations .....	15,000.00	15,000.00
5	Equipment .....	12,000.00	12,000.00
6	Total .....	\$ 607,860.00	\$ 627,120.00
7	All revenue collected by the		



- 8 above spending unit in excess
- 9 of the amount required to
- 10 pay the principal and inter-
- 11 est on outstanding Clinic
- 12 Bonds shall be deposited to
- 13 the State Fund — General
- 14 Revenue.

80—*Lakin State Hospital*

## Acct. No. 423

1	Personal Services, including		
2	Salary of Superintendent .....	\$ 96,555.00	\$ 104,715.00
3	Current Expenses .....	93,400.00	93,400.00
4	Repairs and Alterations .....	16,800.00	15,300.00
5	Equipment .....	12,300.00	11,800.00
6	Total .....	\$ 219,055.00	\$ 225,215.00

81—*Barboursville State Hospital*

## Acct. No. 424

1	Personal Services, including		
2	Salary of Superintendent .....	\$ 82,480.00	\$ 92,320.00
3	Current Expenses .....	110,500.00	110,200.00
4	Repairs and Alterations .....	6,900.00	6,000.00
5	Equipment .....	7,050.00	10,300.00
6	Total .....	\$ 206,930.00	\$ 218,820.00

82—*Fairmont Emergency Hospital*

## Acct. No. 425

1	Personal Services, including		
2	Salary of Superintendent .....	\$ 84,380.00	\$ 84,380.00
3	Current Expenses .....	61,160.00	61,160.00
4	Repairs and Alterations .....	9,000.00	9,000.00
5	Equipment .....	6,200.00	6,200.00
6	Total .....	\$ 160,740.00	\$ 160,740.00

83—*Welch Emergency Hospital*

## Acct. No. 426

1	Personal Services, including		
2	Salary of Superintendent .....	\$ 78,200.00	\$ 78,200.00

3	Current Expenses .....	119,350.00	119,350.00
4	Repairs and Alterations .....	18,500.00	8,000.00
5	Equipment .....	4,000.00	4,000.00
6	Total .....	\$ 220,050.00	\$ 209,550.00

## 84—Hopemont Sanitarium

## Acct. No. 430

1	Personal Services, including		
2	Salary of Superintendent .....	\$ 277,050.00	\$ 284,670.00
3	Current Expenses .....	221,100.00	221,100.00
4	Repairs and Alterations .....	20,500.00	20,500.00
5	Equipment .....	15,900.00	15,900.00
6	Total .....	\$ 534,550.00	\$ 542,170.00

## 85—Pinecrest Sanitarium

## Acct. No. 431

1	Personal Services, including		
2	Salary of Superintendent .....	\$ 440,260.00	\$ 464,460.00
3	Current Expenses .....	409,575.00	409,575.00
4	Repairs and Alterations .....	27,500.00	24,500.00
5	Equipment .....	26,800.00	15,400.00
6	Total .....	\$ 904,135.00	\$ 913,935.00

## 86—Denmar Sanitarium

## Acct. No. 432

1	Personal Services, including		
2	Salary of Superintendent .....	\$ 78,880.00	\$ 82,780.00
3	Current Expenses .....	79,666.00	79,666.00
4	Repairs and Alterations .....	7,900.00	7,900.00
5	Equipment .....	8,000.00	8,000.00
6	Total .....	\$ 174,446.00	\$ 178,346.00

## 87—Berkeley Springs Sanitarium

## Acct. No. 436

1	Personal Services; Including		
2	Salary of Superintendent .....	\$ 15,060.00	\$ 25,350.00

3	Current Expenses .....	5,305.00	7,105.00
4	Repairs and Alterations .....	1,500.00	1,500.00
5	Equipment .....	1,750.00	1,750.00
6	Total .....	\$ 23,615.00	\$ 35,705.00

## BUSINESS AND INDUSTRIAL RELATIONS

## 89—Bureau of Labor and Department of Weights and Measures

## Acct. No. 450

1	Salary of Commissioner .....	\$ 6,000.00	\$ 6,000.00
2	Personal Services .....	147,920.00	147,920.00
3	Current Expenses .....	67,000.00	67,000.00
4	Equipment .....	4,000.00	4,000.00
5	Total .....	\$ 224,920.00	\$ 224,920.00

## 90—Department of Mines

## Acct. No. 460

1	Salary of Chief .....	\$ 6,000.00	\$ 6,000.00
2	Other Personal Services .....	488,880.00	488,880.00
3	Current Expenses .....	169,200.00	169,200.00
4	Equipment .....	133,200.00	33,200.00
5	Total .....	\$ 797,280.00	\$ 697,280.00

## 91—Commission on Interstate Cooperation

## Acct. No. 472

1	Total .....	\$ 8,500.00	\$ 8,500.00
2	Out of the above appropriation		
3	the sum of \$6,000.00 may be		
4	made available for West Vir-		
5	ginia's membership in the		
6	Council of State Govern-		
7	ments.		

## 92—Interstate Commission on Potomac River Basin

## Acct. No. 473

1	West Virginia's contribution to		
2	Potomac River Basin Inter-		

3 state Commission \_\_\_\_\_\$ 3,600.00 \$ 3,600.00

93—Ohio River Valley Water Sanitation

Commission

Acct. No. 474

1 West Virginia's contribution to

2 the Ohio River Valley Water

3 Sanitation Commission \_\_\_\_\_\$ 12,250.00 \$ 12,250.00

94—Department of Banking

Acct. No. 480

1 Salary of Commissioner \_\_\_\_\_\$ 6,000.00 \$ 6,000.00

2 Other Personal Services \_\_\_\_\_ 38,940.00 38,940.00

3 Current Expenses \_\_\_\_\_ 19,860.00 20,860.00

4 Equipment \_\_\_\_\_ 1,375.00 875.00

5 Total \_\_\_\_\_\$ 66,175.00 \$ 66,675.00

95—Board of Aeronautics

Acct. No. 485

1 Personal Services \_\_\_\_\_\$ 14,160.00 \$ 14,160.00

2 Current Expenses \_\_\_\_\_ 10,100.00 8,550.00

3 Equipment \_\_\_\_\_ 1,500.00 1,000.00

4 Airport Development \_\_\_\_\_ 5,000.00 5,000.00

5 Repairs to Airplane \_\_\_\_\_ 2,500.00

6 Total \_\_\_\_\_\$ 33,260.00 28,710.00

96—West Virginia Industrial and Publicity Commission

Acct. No. 486

1 Personal Services \_\_\_\_\_\$ 23,000.00 \$ 23,000.00

2 Current Expenses \_\_\_\_\_ 42,000.00 42,000.00

3 Equipment \_\_\_\_\_ 1,000.00 1,000.00

4 Total \_\_\_\_\_\$ 66,000.00 \$ 66,000.00

97—West Virginia Non-Intoxicating Beer Commission

Acct. No. 490

1 Personal Services \_\_\_\_\_\$ 89,400.00 \$ 89,400.00

2 Current Expenses \_\_\_\_\_ 66,570.00 66,570.00

3	Equipment _____	1,000.00	1,000.00
4	Total _____	\$ 156,970.00	\$ 156,970.00

98—*West Virginia Racing Commission*

## Acct. No. 495

1	To pay per diem of members		
2	and other general expenses—	\$ 33,000.00—	\$ 33,000.00

## AGRICULTURE

99—*Department of Agriculture*

## Acct. No. 510

1	Salary of Commissioner _____	\$ 6,000.00	\$ 6,000.00
2	Other Personal Services _____	110,000.00	111,000.00
3	Current Expenses _____	65,000.00	65,000.00
4	Equipment _____	10,000.00	10,000.00
5	For the Eradication and Pre-		
6	vention of Livestock Diseases		
7	—To be expended at the dis-		
8	cretion of the Commissioner		
9	of Agriculture _____	115,685.00	116,325.00
10	Aid to Dairy Development Pro-		
11	gram _____	48,960.00	49,520.00
12	Eradication and Control of Jap-		
13	anese beetle and other plant		
14	pests _____	27,000.00	18,000.00
15	Total _____	\$ 382,645.00	\$ 375,845.00

100—*Department of Agriculture—Soil Conservation**Committee*

## Acct. No. 512

1	To pay per diem and travel ex-		
2	penses of District Supervisors		
3	and Other General Expenses		
4	of the Soil Conservation Com-		
5	mittee _____	\$ 40,000.00	\$ 40,000.00

101—*Department of Agriculture—Marketing and Research*

## Acct. No. 513

1	For cooperation with the Fed-		
---	-------------------------------	--	--

2	eral Government in a pro-			
3	gram of marketing and re-			
4	search .....	\$	50,000.00	\$ 50,000.00
5	Any part or all of this appro-			
6	priation may be transferred			
7	to Special Revenue Fund for			
8	the purpose of matching fed-			
9	eral funds for the above			
10	named purpose.			

102—*Department of Agriculture—Agricultural Awards*

Acct. No. 515

1	Incorporated County and Dis-			
2	trict Fairs, 4-H Fairs and Ex-			
3	hibits and Vocational Agri-			
4	culture Fairs and Exhibits ....	\$	12,500.00	\$ 12,500.00
5	State Agricultural Fairs and			
6	Agricultural and Industrial			
7	Exhibits .....		25,000.00	25,000.00
8	West Virginia State Fair .....		25,000.00	25,000.00
9	Mountain State Forest Festival		7,500.00	7,500.00
10	Total .....	\$	70,000.00	\$ 70,000.00
11	To be expended at the discre-			
12	tion of the Commissioner of			
13	Agriculture and in accord-			
14	ance with law.			

CONSERVATION AND DEVELOPMENT

103—*West Virginia Geological Survey*

Acct. No. 520

1	Personal Services, including			
2	Salary of State Geologist .....	\$	64,980.00	\$ 64,080.00
3	Current Expenses .....		21,365.00	21,365.00
4	Equipment .....		6,900.00	1,900.00
5	Total .....	\$	93,245.00	\$ 87,345.00
6	Of the above appropriation for			
7	Current Expenses not more			
8	than \$5,000.00 may be used			

- 9 each year of the biennium to  
 10 cooperate with the United  
 11 States Geological Survey in  
 12 Ground Waters Resources  
 13 Study.

104—*Conservation Commission—Division of Game,  
 Fish and Forestry*

Acct. No. 521

1	Personal Services .....	\$ 283,800.00	\$ 241,290.00
2	Current Expenses .....	26,700.00	26,700.00
3	White Pine Blister Rust Con-		
4	trol .....	2,500.00	3,000.00
5	To Match Pittman-Robertson		
6	Appropriation .....	100,000.00	100,000.00
7	Total .....	\$ 413,000.00	\$ 370,990.00

105—*Conservation Commission—Division of State Parks*

Acct. No. 522

1	Personal Services .....	\$ 59,840.00	\$ 59,840.00
2	Current Expenses .....	75,000.00	65,100.00
3	Repairs and Alterations .....	10,000.00	5,000.00
4	Equipment .....	7,360.00	7,360.00
5	Total .....	\$ 152,200.00	\$ 137,300.00

106—*Conservation Commission—Clarke-McNary*

Acct. No. 523

1	For cooperation with the		
2	United States Department of		
3	Agriculture in Fire Preven-		
4	tion and Control .....	\$ 75,000.00	\$ 75,000.00

107—*Point Pleasant Battle Monument Commission*

Acct. No. 561

1	For Maintenance of Historical		
2	Monument .....	\$ 3,900.00	\$ 3,200.00

108—*Rumseyan Society*

Acct. No. 562

1	For Maintenance of Historical			
2	Monument .....	\$	250.00	\$ 250.00

109—*Morgan Morgan Memorial*

Acct. No. 563

1	For Maintenance of Historical			
2	Monument .....	\$	25.00	\$ 25.00

110—*Grafton G. A. R. Post*

Acct. No. 564

1	In aid of Memorial Day Patri-			
2	otic Exercises .....	\$	1,500.00	\$ 1,500.00
3	To be expended subject to the			
4	approval of The Board of			
5	Public Works upon presenta-			
6	tion of satisfactory plans by			
7	the Grafton G. A. R. Post,			
8	American Legion, Veterans			
9	of Foreign Wars and Sons of			
10	Veterans.			

## PROTECTION

111—*Department of Public Safety*

Acct. No. 570

1	Salary of Superintendent .....	\$	6,000.00	\$ 6,000.00
2	Other Personal Services .....		650,335.00	656,335.00
3	Current Expenses .....		486,909.00	480,732.00
4	Repairs and Alterations .....		20,050.00	20,050.00
5	Equipment .....		63,520.00	51,510.00
6	Total .....	\$	1,226,814.00	\$ 1,214,627.00

112—*Adjutant General—State Militia*

Acct. No. 580

1	Salary of Adjutant General	\$	6,000.00	\$ 6,000.00
2	Other Personal Services		41,400.00	41,400.00
3	Current Expenses		136,970.00	138,870.00



4	Repairs and Alterations .....	6,800.00	6,800.00
5	Equipment .....	4,500.00	3,300.00
6	Compensation of Commanding		
7	Officers, Clerical Services and		
8	Care of Property .....	59,635.00	64,635.00
9	Total .....	\$ 255,305.00	\$ 261,005.00

113—*State Board of Education—Insurance*

## Acct. No. 584

1	Fire Insurance Premiums .....	\$ 50,000.00	
2	Boiler Insurance Premiums .....		5,000.00
3	Total .....	\$ 50,000.00	\$ 5,000.00
4	To pay insurance premiums on		
5	buildings and contents and		
6	boilers of state colleges.		
7	The above appropriation for		
8	premiums is for a three-year		
9	period.		

114—*West Virginia Board of Control—Insurance*

## Acct. No. 585

1	Fire Insurance Premiums .....	\$ 100,000.00	\$	
2	Boiler Insurance Premiums .....			5,000.00
3	Total .....	\$ 100,000.00	\$	5,000.00
4	To pay insurance premiums on			
5	buildings and contents and			
6	boilers of state institutions.			
7	The above appropriation for			
8	premiums is for a three-year			
9	period.			

115—*State Board of Examiners of Accountants*

## Acct. No. 586

1	To pay the per diem of mem-			
2	bers and other general ex-			
3	penses .....	\$ 900.00	\$	900.00
4	From collections .....	900.00		900.00

115-a—*State Athletic Commission*

## Acct. No. 587

1 To pay per diem of members			
2 and other general expenses..\$	3,500.00	\$	3,500.00
3 From Collections .....	3,500.00		3,500.00

116—*State Board of Examiners of Registered Nurses*

## Acct. No. 588

1 To pay the per diem of mem-			
2 bers and other general ex-			
3 penses .....	\$ 15,000.00	\$	15,000.00
4 From Collections .....	15,000.00		15,000.00

117—*State Board of Dental Examiners*

## Acct. No. 589

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

118—*State Board of Pharmacy*

## Acct. No. 590

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

119—*State Board of Osteopathy*

## Acct. No. 591

1 To pay the per diem of mem-			
2 bers and other general ex-			
3 penses .....	\$ 900.00	\$	900.00
4 From Collections .....	900.00		900.00

120—*State Board of Optometry*

## Acct. No. 592

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

4 From Collections .....	2,000.00	2,000.00
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## 121—State Board of Embalmers and Funeral Directors

Acct. No. 593

1 To pay the per diem of mem-		
2 bers and other general ex-		
3 penses .....	\$ 9,000.00	\$ 9,000.00
4 From Collections .....	9,000.00	9,000.00

## 122—State Board of Registration for Professional Engineers

Acct. No. 594

1 To pay the per diem of mem-		
2 bers and other general ex-		
3 penses .....	\$ 8,025.00	\$ 8,650.00
4 From Collections .....	8,025.00	8,650.00

## 123—State Board of Examiners for Architects

Acct. No. 595

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

## 124—State Board of Examiners for Veterinarians

Acct. No. 596

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

## 125—State Board of Law Examiners

Acct. No. 597

1 To pay the per diem of mem-		
2 bers and other general ex-		
3 penses .....	\$ 2,400.00	\$ 2,400.00

## 126—Treasurer's Office—Bonded Obligations

Acct. No. 599

1 To pay the principal and inter-	
2 est requirements of refund-	

3 ing bonds authorized under  
 4 Chapter 58 of the First Ex-  
 5 traordinary Session of the  
 6 1933 Legislature to pay non-  
 7 bonded debts existing at the  
 8 time of the adoption of the  
 9 tax limitation amendment.....\$ 290,000.00 \$ 280,000.00

Sec. 2. *Appropriations from Other Funds.*—From the  
 2 funds designated there is hereby appropriated condition-  
 3 ally upon the fulfillment of the provisions set forth in  
 4 chapter thirty-nine, acts of the Legislature, regular session,  
 5 one thousand nine hundred thirty-nine, the following  
 6 amounts, as itemized, for expenditure during the fiscal  
 7 years one thousand nine hundred fifty and one thousand  
 8 nine hundred fifty-one.

127—*Department of Agriculture*

Acct. Nos. 654 and 655

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services .....	\$ 73,280.00	\$ 76,180.00
2 Current Expenses and Equip-		
3 ment .....	41,680.00	39,675.00
4 Total .....	\$ 114,960.00	\$ 115,855.00

5 The total amount of this appro-  
 6 priation shall be paid from  
 7 Special Revenue Fund out of  
 8 collections made by the De-  
 9 partment of Agriculture as  
 10 provided by law.

128—*Insurance Commissioner—Fire Marshal*

Acct. No. 660

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services .....	\$ 39,600.00	\$ 42,000.00
2 Current Expenses .....	26,815.00	26,815.00
3 Equipment .....	5,200.00	3,200.00
4 Total .....	\$ 71,615.00	\$ 72,015.00

5 The total amount of this appro-

6 priation shall be paid from  
 7 Special Revenue Fund out of  
 8 collections of the special tax  
 9 of one-half of one per cent of  
 10 premium receipts of fire in-  
 11 surance companies as pro-  
 12 vided by law.

### 129—Public Service Commission

Acct. No. 661

#### TO BE PAID FROM SPECIAL REVENUE FUND

1	Salaries of Commissioners .....	\$ 18,000.00	\$ 18,000.00
2	Other Personal Services .....	167,300.00	167,300.00
3	Current Expenses .....	39,700.00	39,700.00
4	Equipment .....	5,000.00	5,000.00
5	Total .....	\$ 230,000.00	\$ 230,000.00

6 The total amount of this appro-  
 7 priation shall be paid from  
 8 Special Revenue Fund out of  
 9 collections for special license  
 10 fees from public service cor-  
 11 porations as provided by law.  
 12 Out of the above appropriation  
 13 \$5,000.00 may be transferred  
 14 annually to the State Water  
 15 Commission for use in coop-  
 16 eration with the U. S. Geo-  
 17 logical Survey in a program  
 18 of stream gauging.

### 130—Public Service Commission—Motor Carrier Division

Acct. No. 662

#### TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ 176,170.00	\$ 176,170.00
2	Current Expenses .....	32,000.00	32,000.00
3	Equipment .....	5,000.00	5,000.00
4	Total .....	\$ 213,170.00	\$ 213,170.00

5 The total amount of this appro-

6 priation shall be paid from  
 7 Special Revenue Fund out of  
 8 receipts collected for or by  
 9 the Public Service Commis-  
 10 sion pursuant to and in the  
 11 exercise of regulatory author-  
 12 ity over motor carriers as au-  
 13 thorized by law.

131—*Conservation Commission—General Administration*

Acct. No. 663

TO BE PAID FROM SPECIAL REVENUE FUND

1 Salary of Director.....	\$ 6,000.00	\$ 6,000.00
2 Other Personal Services.....	36,600.00	36,600.00
3 Current Expenses .....	40,000.00	42,000.00
4 Equipment .....	3,000.00	3,000.00

5 Total .....	\$ 85,600.00	\$ 88,600.00
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6 The total amount of this appro-  
 7 priation shall be paid from  
 8 special revenue fees col-  
 9 lected by the conservation  
 10 commission.

11 All items are for administra-  
 12 tion purposes only and shall  
 13 not be construed as a limit  
 14 upon the expenditures from  
 15 the Special Revenue collec-  
 16 tions of said department, ex-  
 17 cept for administration. In  
 18 addition to the above appro-  
 19 priation the sum of \$5,000.00  
 20 may be transferred annually  
 21 from the special revenue col-  
 22 lections of said department  
 23 to the state water commis-  
 24 sion for use in cooperation  
 25 with the U. S. Geological  
 26 Survey in a program of  
 27 stream gauging.

## 132—West Virginia Liquor Control Commission

Acct. No. 667

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Salaries of three members of		
2	the Commission .....	\$ 18,000.00	\$ 18,000.00
3	Other Personal Services.....	385,000.00	385,000.00
4	Current Expenses .....	40,000.00	40,000.00

5	Total .....	\$ 443,000.00	\$ 443,000.00
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6 The total amount of this appro-  
 7 priation shall be paid from  
 8 the Special Revenue Fund  
 9 out of liquor revenues.

10 The above appropriation does  
 11 not include the salaries of  
 12 store personnel, store inspec-  
 13 tors, store operating expenses  
 14 or equipment, purchase of  
 15 liquor, or equipment for ad-  
 16 ministration offices. There is  
 17 hereby appropriated from  
 18 liquor revenues, in addition  
 19 to the above appropriation,  
 20 the necessary amount to pay  
 21 salaries of store personnel,  
 22 store inspectors, store operat-  
 23 ing expenses, purchase of liq-  
 24 uor and transportation there-  
 25 of, and purchase of adminis-  
 26 tration equipment: *Pro-*  
 27 *vided, however,* That no ex-  
 28 penditures shall be made  
 29 from moneys hereby appro-  
 30 priated, except in compliance  
 31 with and in conformity to the  
 32 provisions of chapter thirty-  
 33 nine, acts of the Legislature,  
 34 regular session, one thousand  
 35 nine hundred thirty-nine. The

36 state liquor control com-  
 37 mission shall, by proper min-  
 38 ute order, file with the direc-  
 39 tor of the Budget, on July 1,  
 40 1949, an exact schedule of all  
 41 encumbrances against the  
 42 liquor revenues as of that  
 43 date, and shall thereafter  
 44 submit to the director of the  
 45 Budget for approval all pay-  
 46 rolls, requisitions for pur-  
 47 chases, contracts and other  
 48 prospective encumbrances:  
 49 *Provided further*, That it is  
 50 the intent of this Legislature  
 51 that in the preparation of the  
 52 budget document for the  
 53 1951-53 biennium that all sal-  
 54 aries of store personnel, store  
 55 operating expense and equip-  
 56 ment, shall be included in this  
 57 appropriation.

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

Acct. No. 670

TO BE PAID FROM STATE ROAD FUND

1	Salary of Commissioner.....	\$ 8,000.00	\$ 8,000.00
2	Other Personal Services.....	373,280.00	373,280.00
3	Current Expenses .....	90,000.00	90,000.00
4	Equipment .....	30,000.00	30,000.00
5	Total .....	\$ 501,280.00	\$ 501,280.00
6	In addition to the foregoing ap-		
7	propriations or claims, as au-		
8	thorized by this act or by law		
9	to be paid from the state road		
10	fund, the balance or residue		
11	of the annual receipts of the		



12 state road fund are hereby  
13 appropriated first for the pay-  
14 ment of interest on and prin-  
15 cipal of outstanding road  
16 bonds, and thereafter for  
17 maintenance, construction  
18 and reconstruction of state  
19 roads, in accordance with the  
20 provisions of chapter seven-  
21 teen, code of West Virginia,  
22 1931, as amended: *Pro-*  
23 *vided, however,* That no  
24 funds from the blanket ap-  
25 propriations in lines 6 to 22,  
26 inclusive, shall be available  
27 for expenditure except in  
28 compliance with and in con-  
29 formity to the provisions of  
30 chapter thirty-nine, acts of  
31 the Legislature, regular ses-  
32 sion, one thousand nine hun-  
33 dred thirty-nine. The state  
34 road commission shall, by  
35 proper minute order file with  
36 the director of the budget,  
37 on July 1, 1949, an exact  
38 schedule of all encumbrances  
39 against the state road fund  
40 as of that date, and shall  
41 thereafter submit to the di-  
42 rector of the budget for ap-  
43 proval all payrolls, requis-  
44 itions for purchases, contracts,  
45 right-of-way acquisitions,  
46 debt service requirements  
47 and other prospective en-  
48 cumbrances. And the direc-  
49 tor of the budget shall have  
50 the right to allocate expendi-  
51 tures under prospective en-  
52 cumbrances.

134—*Department of Motor Vehicles*

## Acct. No. 671

## TO BE PAID FROM STATE ROAD FUND

1	Salary of Commissioner.....	\$ 6,000.00	\$ 6,000.00
2	Other Personal Services.....	325,000.00	325,000.00
3	Current Expenses .....	120,000.00	120,000.00
4	Equipment .....	20,000.00	20,000.00
5	Total .....	\$ 471,000.00	\$ 471,000.00

135—*State Board of Education*

## Acct. No. 700

## TO BE PAID FROM THE GENERAL SCHOOL FUND

1	Personal Services.....	\$ 21,620.00	\$ 21,820.00
2	Current Expenses.....	15,150.00	15,150.00
3	Equipment .....	700.00	700.00
4	Out-of-State aid to Negroes.....	10,000.00	10,000.00
5	Total .....	\$ 47,470.00	\$ 47,670.00

136—*State Board of Education—Vocational Division*

## Acct. No. 701

## TO BE PAID FROM THE GENERAL SCHOOL FUND

1	Personal Services.....	\$ 23,265.00	\$ 23,265.00
2	Current Expenses.....	9,930.00	10,130.00
3	Equipment .....	500.00	500.00
4	Vocational Aid .....	200,000.00	200,000.00
5	Plans and surveys for a State		
6	Camp and Conference Center		
7	for Future Farmers of Amer-		
8	ica — Future Homemakers of		
9	America .....	\$ 5,000.00	\$ 5,000.00
10	Total .....	\$ 238,695.00	\$ 238,895.00

137—*State Board of Education—Rehabilitation Division*

## Acct. No. 702

## TO BE PAID FROM GENERAL SCHOOL FUND

1	Vocational Rehabilitation Ser-		
2	vices .....	\$ 200,000.00	\$ 200,000.00

138—*Department of Education*

Acct. No. 703

## TO BE PAID FROM GENERAL SCHOOL FUND

1	Salary of State Superintendent			
2	ent .....	\$	6,000.00	\$ 6,000.00
3	Other Personal Services .....		110,000.00	110,000.00
4	Current Expenses .....		55,000.00	55,000.00
5	Equipment .....		2,000.00	2,000.00
6	Salaries of County Superintendents .....		60,000.00	60,000.00
8	Total .....	\$	233,000.00	\$ 233,000.00

139—*State Board of School Finance*

Acct. No. 704

## TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services .....	\$	12,100.00	\$ 12,100.00
2	Current Expenses .....		5,000.00	5,000.00
3	Total .....	\$	17,100.00	\$ 17,100.00

140—*Department of Education—Hot Lunches*

Acct. No. 705

## TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services .....	\$	37,500.00	\$ 37,500.00
2	Current Expenses .....		11,720.00	11,720.00
3	Aid to Counties—Includes hot lunches and canning for hot lunches .....		100,000.00	100,000.00
6	Total .....	\$	149,220.00	\$ 149,220.00

141—*Auditor's Office—Land Department*

Acct. No. 709

## TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services .....	\$	60,000.00	\$ 60,000.00
2	Current Expenses .....		1,500.00	1,500.00

3	Equipment .....	1,000.00	1,000.00
4	Total .....	\$ 62,500.00	\$ 62,500.00

142—*Workmen's Compensation Commission*

Acct. No. 900

## TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1	Salary of Commissioner .....	\$ 6,000.00	\$ 6,000.00
2	Other Personal Services .....	463,120.00	463,120.00
3	Current Expenses .....	203,875.00	200,875.00
4	Equipment .....	40,000.00	22,000.00
5	Total .....	\$ 712,995.00	\$ 691,995.00

6 There is hereby authorized to  
 7 be paid out of the above ap-  
 8 propriation for Current Ex-  
 9 penses the amount necessary  
 10 for the premiums on bonds  
 11 given by the State Treasurer  
 12 and bond custodian for the  
 13 protection of the Workmen's  
 14 Compensation Fund.

Sec. 3. *Supplemental Appropriations.*—From the State  
 2 Fund, General Revenue, except as otherwise provided,  
 3 there is hereby appropriated the following amounts, as  
 4 itemized, for expenditure during the fiscal year one thou-  
 5 sand nine hundred and forty-nine to supplement the  
 6 1948-49 appropriations, and to be available for expenditure  
 7 upon date of passage.

143—*Circuit Courts*

Acct. No. 111

1	Current Expenses .....	\$ 23,000.00 ✓
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144—*Auditor's Office—Criminal Charges*

Acct. No. 119

1	Criminal Charges .....	\$ 55,000.00 ✓
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145—*Central Mailing Office*

Acct. No. 280

1	Current Expenses .....	\$ 26,000.00 ✓
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146—*Department of Education*

## Acct. No. 295

- 1 State Aid to supplement the  
2 General School Fund to be  
3 distributed on a formula to  
4 be determined by the State  
5 Board of School Finance to  
6 assist counties in maintaining  
7 a term of nine months ..... \$ 205,000.00 ✓  
8 Out of this appropriation the  
9 sum of \$5,000.00 shall be  
10 available to the State Board  
11 of School Finance to aid  
12 counties in providing instruc-  
13 tion for Home-bound Crip-  
14 pled Children.

146-a—*West Virginia Schools for the Deaf and Blind*

## Acct. No. 333

- 1 Current Expenses ..... \$ 10,000.00 ✓

147—*West Virginia Industrial Home for Girls*

## Acct. No. 372

- 1 Current Expenses ..... \$ 5,000.00 ✓

148—*West Virginia Penitentiary*

## Acct. No. 375

- 1 Current Expenses ..... \$ 35,000.00 ✓

149—*Medium Security Prison*

## Acct. No. 376

- 1 Current Expenses ..... \$ 10,000.00 ✓

150—*Andrew S. Rowan Memorial Home*

## Acct. No. 384

- 1 Current Expenses ..... \$ 10,000.00 ✓

151—*West Virginia Department of Veterans Affairs*

## Acct. No. 404

- 1 Personal Services ..... \$ 1,815.00 ✓

## 152—Huntington State Hospital

## Acct. No. 422

1	Current Expenses .....	\$	20,000.00 ✓
2	Equipment .....		20,000.00 ✓
<hr/>			
3	Total .....	\$	40,000.00

## 153—Welch Emergency Hospital

## Acct. No. 426

1	Current Expenses .....	\$	18,000.00 ✓
2	Repairs and Alterations .....		3,000.00 ✓
<hr/>			
3	Total .....	\$	21,000.00

## 153-a—West Virginia Board of Control—

## West Virginia Foundation for Crippled Children—"Pines"

## Acct. No. 433

1	To be used for paying for work		
2	done under former contract		
3	and for the completion of re-		
4	pairs and improvements au-		
5	thorized by former contract		
6	with Board of Control .....	\$	3,161.27

## 154—Department of Mines

## Acct. No. 460

1	Personal Services .....	\$	27,800.00 ✓
2	Current Expenses .....		12,200.00 ✓
<hr/>			
3	Total .....	\$	40,000.00

## 155—Ohio River Valley Water Sanitation Commission

## Acct. No. 474

1	West Virginia's contribution to		
2	the Ohio River Valley Water		
3	Sanitation Commission .....	\$	2,450.00

## 156—West Virginia Racing Commission

## Acct. No. 495

1	To pay per diem of Members		
2	and other general expenses...	\$	5,000.00

156-a—*Public Service Commission*

Acct. No. 661

## TO BE PAID FROM SPECIAL REVENUE FUND

1	To pay per diem and expenses	
2	of special Investigators in	
3	utility rate cases .....	\$ 30,000.00
4	Any unexpended balance re-	
5	maining in this appropria-	
6	tion at the close of the fiscal	
7	year 1948-49 is hereby reap-	
8	propriated for expenditure	
9	during the 1949-51 biennium.	

157—*State Board of Education*

Acct. No. 700

## TO BE PAID FROM GENERAL SCHOOL FUND

1	Out-of-State Aid to Negroes ....	\$ 1,000.00
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158—*Department of Education*

Acct. No. 703

## TO BE PAID FROM THE GENERAL SCHOOL FUND

1	Other Personal Services .....	\$ 7,077.00 ✓
2	Current Expenses .....	30,000.00 ✓
3	Total .....	\$ 37,077.00

159—*Department of Education—Hot Lunches*

Acct. No. 705

## TO BE PAID FROM THE GENERAL SCHOOL FUND

1	Personal Services .....	\$ 7,988.00 ✓
2	Current Expenses .....	1,600.00 ✓
3	Total .....	\$ 9,588.00

160—*Workmen's Compensation—Deficiency Appropriation*

Acct. No. 900

1	Current Expense 1948-49 .....	\$ 43,750.00 ✓
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Section 4. *Awards for Claims Against the State.*—Appropriations to pay awards for claims against the State as ap-

3 proved and certified by the State Court of Claims are for  
 4 the remainder of the fiscal year 1948-49, and to remain in  
 5 effect until June 30, 1951.

*Claims Versus State Auditor  
 Corporation Department*

TO BE PAID FROM GENERAL REVENUE FUND

1 Crescent Brick Company .....	\$	333.40
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*Claim Versus State Auditor  
 Criminal Claims Department*

TO BE PAID FROM GENERAL REVENUE FUND

1 Daugherty, Duncan W. ....	\$	615.00
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*Claim Versus State Board of Control  
 West Virginia Industrial School for Boys*

TO BE PAID FROM GENERAL REVENUE FUND

1 Musgrove Wholesale Grocery .	\$	151.66
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*Claims Versus State Board of Education  
 West Virginia State College*

TO BE PAID FROM GENERAL REVENUE FUND

1 Brodhead-Garrett Company ...	\$	69.86
2 Galperin Music Company.....		27.95
3 Robinson, Robert Ray, infant,		
4 by Bob Robinson.....		2,000.00
5 Webb, Lena J.....		35.00

*Claim Versus State Board of Education  
 West Virginia Institute of Technology*

TO BE PAID FROM GENERAL REVENUE FUND

1 Charleston Electrical Supply		
2 Company .....		300.00

*Claim Versus State Department of Motor Vehicles*

TO BE PAID FROM STATE ROAD FUND

1 Elite Laundry Company.....	\$	52.50
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*Claim Versus Probation and Parole Department*

## TO BE PAID FROM GENERAL REVENUE FUND

1 Coole, J. W. ....	\$	5,000.00
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*Claims Versus State Department of Unemployment Compensation*

## TO BE PAID FROM SPECIAL REVENUE FUND

1 Buffalo-Winifrede Coal Com-		
2 pany, a corporation.....	\$	52.05
3 Utilities Coal Company, a cor-		
4 poration .....		240.62

*Claims Versus State Road Commission*

## TO BE PAID FROM STATE ROAD FUND

1 Bailey, Clark.....	\$	50.00
2 Breedlove, John H.....		210.73
3 Brown, Sarah Ann.....		500.00
4 Cabell, Hewitt L.....		226.07
5 Catron, S. P.....		1,250.00
6 Clark, Maud .....		500.00
7 Cochran, Zackwell .....		40.00
8 Eureka Pipe Line Co.....		367.42
9 Eureka Pipe Line Co.....		209.31
10 Farley, Alex .....		100.00
11 Hendrickson, Jack and Martha		22.15
12 Jackson, Dee .....		100.00
13 Jordan, W. B.....		1,000.00
14 Jordan, Lena .....		250.00
15 Jordan, Betty Lou.....		250.00
16 Jordan, W. B., Jr.....		250.00
17 Knisley, Wm. M.....		17.50
18 Leonard, Clifford .....		56.62
19 Light, Sibyl C.....		540.00
20 Lowe, R. B.....		217.67
21 Lycans, Grace .....		374.49
22 Moore, Lucille H.....		239.62
23 McClung, Alice E.....		1,440.00
24 McGrady, Sim .....		38.00
25 Presson, Katherine .....		100.00
26 Price, A. S.....		300.00

27	Saunders, Thomas .....	300.00
28	Short, Nellie O.....	43.90
29	Sidell, A. R., M. D.....	19.81
30	Slayton, George .....	25.00
31	Starcher, Zora, Bessie Starcher	
32	Cahill and Nora Starcher	
33	Rexroad .....	150.00
34	Weaver, James M.....	16.00
35	Whitaker, R. C. and American	
36	Central Insurance Company..	41.93
37	Wilson, Blanche .....	750.00
38	Wisman, George, James and	
39.	Garnett, and Hazel Wood	
40	and Ed. Moore .....	500.00
41	Young, Elizabeth .....	16.70
42	Total .....	\$ 10,512.92

*Claim Versus Adjutant General's Department*

TO BE PAID FROM GENERAL REVENUE FUND

1	Palmer, Virginia S. ....	\$ 131.48
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Section 5. *Capital Expenditures from Surplus Revenues.*—

2 The following items are appropriated from the general  
 3 revenue fund, subject to the following terms and condi-  
 4 tions:

5 (a) The following items are hereby appropriated and  
 6 are to be available for expenditure only out of the surplus  
 7 in the treasury on the first day of July, 1949, or at the time  
 8 release or encumbrance of any such items is made, subject  
 9 to the conditions and limitations hereinafter expressed. On  
 10 the best information which can be secured at this time it is  
 11 estimated the amount of such surplus will be approximately  
 12 \$38,500,000.00.

13 Before making funds available or encumbering such sur-  
 14 plus for expenditure hereunder, except as provided by sub-  
 15 section (b) hereof, the board of public works shall review  
 16 the revenues of the state from the first day of July, 1949 to  
 17 the date that appropriations hereunder are expected to be  
 18 made available or encumbered for expenditure hereunder,  
 19 and determine whether, in its opinion, revenues then in  
 20 prospect or on hand will be sufficient to meet all appro-

21 priations under this section, and make a finding with re-  
22 spect thereto.

23 (b) The board of public works, at its discretion, may  
24 release a part or all of any of the items hereinafter set  
25 forth in this section at any time after date of passage of  
26 this act, for the purpose of supplementing funds for con-  
27 struction projects now in process; for the purpose of  
28 constructing buildings where plans and specifications are  
29 complete and ready to submit for bids; and for the purpose  
30 of state aid for county school building program, provided  
31 that the total of such releases for the above purposes made  
32 prior to July 1, 1949, shall not exceed the actual surplus in  
33 the treasury as of July 1, 1948, which is reported at ap-  
34 proximately \$19,500,000.00.

35 (c) The order in which the items of this section are  
36 named does not indicate a preference as to priority of ex-  
37 penditure. The board of public works may authorize the  
38 expenditure of any one or more of said items without  
39 regard to the order in which they are listed.

40 (d) The amounts of the several items are suggestive,  
41 and are not to be considered as absolute. The board may re-  
42 vise or reduce any item downward, without restriction, or  
43 eliminate it entirely, and may increase any one or more  
44 of the items by not more than twenty-five per cent, so long  
45 as such increases, if any, as to items so increased and re-  
46 leased do not exceed the total amount made available un-  
47 der this section, and corresponding decreases or elimina-  
48 tions are made to offset increases.

49 (e) Expenditures authorized, which are for construc-  
50 tion purposes, shall be for a complete and usable unit or pro-  
51 ject, and in any case where additional funds are available,  
52 by aid from a federal agency or other source, such fact may  
53 be considered by the board in determining what items  
54 should at any time be encumbered or released for expendi-  
55 ture, provided, that in making such release the board shall  
56 first determine that all funds available will provide for  
57 completion of a complete and usable unit or project.

58 (f) Any of the items under this section may be released  
59 or encumbrances made therefor at any time after the first  
60 day of July, 1949, as the board may deem proper, subject  
61 to the limitations of subsection (a) herein.

(g) In the event that the amount of the surplus shall exceed the estimated \$38,500,000.00 embracing items (1) to (56), inclusive, the board of public works shall from any excess over such estimated amount first increase the amount of item (2) until it reaches, including the amount of \$2,500,000.00 therein set forth, the sum of \$4,500,000.00, and from any such excess still remaining shall increase the amount, of item (56) until it reaches, including the amount of \$4,000,000.00 therein set forth, the sum of \$7,000,000.00, which said additional sum shall be subject to all the restrictions contained in said item (56).

Subject to the foregoing conditions, the following appropriations are made for the construction, including, if necessary, needed land acquisition, preparation of sites for buildings, and equipment of buildings, and for the purposes named in this section.

Item 1: Capitol Building, for repair of roof and downspouting in main unit, not to exceed \$20,000.00; for overhauling electrical system, not to exceed \$50,000.00; for ceiling plastering, replacement and repair, not to exceed \$100,000.00; and for such other repairs and improvements as may be designated by the Board of Public Works, not to exceed \$30,000.00 .....	\$ 200,000.00
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Item 2: State Office Building Commission, for construction of a State Office Building .....	\$ 2,500,000.00
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Item 3: State Office Building Commission, for purchase of land upon which to construct a building to house state agencies supported in whole or in part from federal funds or state agencies supported by special funds. The amount of this appropriation to be available upon the passage of this act .....	\$ 40,000.00
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103 Item 4: West Virginia Uni-	
104 versity, for such building or	
105 buildings, including land and	
106 improvements thereon, as may	
107 be designated by the Board of	
108 Public Works upon recom-	
109 mendation by the Board of	
110 Governors of West Virginia	
111 University .....	4,000,000.00
112 Of this appropriation \$2,-	
113 000.00 may be used for the pur-	
114 chase of land (Scott lots)—	
115 Preston county.	
116 Item 5: West Virginia Uni-	
117 versity — Agricultural Experi-	
118 ment Station, for such building	
119 or buildings as may be desig-	
120 nated by the Board of Public	
121 Works upon recommendation of	
122 the Board of Governors of West	
123 Virginia University.....	100,000.00
124 Item 6: West Virginia Uni-	
125 versity — Ohio Valley Sub-Sta-	
126 tion, for such building or build-	
127 ings as may be designated by	
128 the Board of Public Works upon	
129 recommendation of the Board	
130 of Governors of West Virginia	
131 University .....	40,000.00
132 Item 7: West Virginia Uni-	
133 versity — Reymann Memorial	
134 Farm, for such building or	
135 buildings as may be designated	
136 by the Board of Public Works	
137 upon recommendation of the	
138 Board of Governors of West	
139 Virginia University.....	100,000.00
140 Item 8: Potomac State School	
141 of West Virginia University,	
142 for science building or for such	
143 building or buildings as may be	

144 designated by the Board of Pub-	
145 lic Works upon recommendation	
146 of the Board of Governors of	
147 West Virginia University.....	627,000.00
148 Item 9: Marshall College,	
149 for: (1) renovation and repair,	
150 including equipment of old sci-	
151 ence building, (2) to equip new	
152 science building, and (3) major	
153 repairs to administration build-	
154 ing and (4) \$100,000 for pur-	
155 chase of improved and unim-	
156 proved lots or parcels of land	
157 situated in the block east of 18th	
158 Street in the city of Huntington	
159 directly across from and adja-	
160 cent to the present campus of	
161 said college .....	835,000.00
162 Item 10: Fairmont State Col-	
163 lege, for library building.....	402,760.00
164 Item 11: Fairmont State Col-	
165 lege, for president's home.....	40,000.00
166 Item 12: Glenville State Col-	
167 lege, for Health and Physical	
168 Educational building .....	500,000.00
169 Item 13: West Liberty State	
170 College, for completion of sew-	
171 age disposal system and im-	
172 provements to water system.....	132,500.00
173 Item 14: West Liberty State	
174 College, for completion of au-	
175 ditorium building .....	70,000.00
176 Item 15: Shepherd College,	
177 for men's dormitory (to be sup-	
178 plemented by funds derived	
179 from sale of revenue bonds)....	200,000.00
180 Item 16: Shepherd College,	
181 for gymnasium building .....	500,000.00
182 Item 17: Concord College,	
183 for (1) to complete and equip	
184 science building, and (2) sew-	

185 age disposal system .....	341,000.00
186 Item 18: West Virginia Insti-	
187 tute of Technology, for science	
188 building and equipment.....	432,000.00
189 Item 19: West Virginia Insti-	
190 tute of Technology, for admin-	
191 istration building and/or such	
192 building or buildings as may be	
193 designated by the Board of Pub-	
194 lic Works upon recommenda-	
195 tion of the State Board of Edu-	
196 cation .....	500,000.00
197 Item 20: West Virginia State	
198 College, for furniture and	
199 equipment for library building	166,950.00
200 Item 21: West Virginia State	
201 College, for purchase of land	50,000.00
202 Item 22: West Virginia State	
203 College, for science building	
204 and/or such building or build-	
205 ings as may be designated by	
206 the Board of Public Works upon	
207 recommendation of the State	
208 Board of Education .....	900,000.00
209 Item 23: Bluefield State Col-	
210 lege, for vocational education	
211 building .....	440,000.00
212 Item 24: Bluefield State Col-	
213 lege, for health and physical	
214 education building and/or such	
215 building or buildings as may be	
216 designated by the Board of Pub-	
217 lic Works upon recommenda-	
218 tion of the State Board of Edu-	
219 cation .....	475,000.00
220 Item 25: West Virginia State	
221 College—4-H Camp for Colored	
222 Boys and Girls, for sewage and	
223 water system .....	25,000.00
224 Item 26: West Virginia	
225 Schools for the Deaf and Blind,	

226 for physical education building	500,000.00
227 Item 27: West Virginia	
228 Schools for the Colored Deaf	
229 and Blind, for auditorium, gym-	
230 nasium and shop building .....	100,000.00
231 Item 28: West Virginia In-	
232 dustrial School for Boys, for	
233 gymnasium and swimming pool	
234 and central heating plant .....	200,000.00
235 Item 29: West Virginia Indus-	
236 trial School for Colored Boys,	
237 for physical education building,	
238 major repairs to main building	
239 and/or such other building or	
240 buildings as may be designated	
241 by the Board of Public Works	
242 upon recommendation of the	
243 Board of Control .....	195,000.00
244 Item 30: West Virginia In-	
245 dustrial Home for Girls, for	
246 such building or buildings or	
247 major repairs and alteration as	
248 may be designated by the Board	
249 of Public Works upon recom-	
250 mendation of the Board of	
251 Control .....	114,500.00
252 Item 31: West Virginia State	
253 Prison for Women, for sewage	
254 treatment plant and major re-	
255 pairs .....	48,000.00
256 Item 32: West Virginia Peni-	
257 tentiary, for completion of new	
258 cell block and acquisition of	
259 coal rights .....	505,650.00
260 Item 33: Medium Security	
261 Prison, for such building or	
262 buildings, including major re-	
263 pairs, as may be designated by	
264 the Board of Public Works upon	
265 recommendation of the Board	
266 of Control .....	103,500.00



267	Item 34: West Virginia Col-	
268	ored Children's Home for fire	
269	escapes and major repairs .....	7,600.00
270	Item 35: West Virginia Home	
271	for Aged and Infirm Colored	
272	Men and Women, for major re-	
273	pairs .....	10,000.00
274	Item 36: West Virginia	
275	Training School for Power	
276	house and central heating plant	
277	and/or such building or build-	
278	ings as may be designated by	
279	the Board of Public Works	
280	upon recommendation of the	
281	Board of Control .....	230,000.00
282	Item 37: Andrew S. Rowan	
283	Memorial Home, for such build-	
284	ing or major repairs and altera-	
285	tions as may be designated by	
286	the Board of Public Works upon	
287	recommendation of the Board	
288	of Control .....	411,500.00
289	Item 38: Weston State Hos-	
290	pital, for such building or build-	
291	ings or fireproofing and en-	
292	larging existing buildings, or	
293	capital repairs, as may be des-	
294	ignated by the Board of Public	
295	Works upon recommendation of	
296	the Board of Control .....	1,288,150.00
297	Item 39: Spencer State Hos-	
298	pital, for such building or build-	
299	ings and repairs and alterations	
300	of buildings, as may be desig-	
301	nated by the Board of Public	
302	Works upon recommendation	
303	of the Board of Control .....	770,000.00
304	Item 40: Huntington State	
305	Hospital, for such building, or	
306	buildings or fireproofing and	
307	major repairs and equipment	

308 of present buildings, as may 309 be designated by the Board of 310 Public Works upon recom- 311 mendation of the Board of Con- 312 trol .....	710,000.00
313 Item 41: Lakin State Hospi- 314 tal, for such building or build- 315 ings, and/or major repairs and 316 alterations as may be desig- 317 nated by the Board of Public 318 Works upon recommendation 319 of the Board of Control .....	489,830.00
320 Item 42: Barboursville State 321 Hospital, for such building or 322 buildings and/or major repairs 323 and alterations as may be desig- 324 nated by the Board of Public 325 Works upon recommendation 326 of the Board of Control .....	255,600.00
327 Item 43: Welch Emergency 328 Hospital, for laundry equip- 329 ment and major repairs to 330 buildings .....	13,500.00
331 Item 44: Hopemont Sanitari- 332 um, for new hospital unit .....	1,000,000.00
333 Item 45: Pinecrest Sanitari- 334 um, for employees' quarters 335 and farm buildings .....	60,000.00
336 Item 46: Denmark Sanitari- 337 um, for additional T. B. unit 338 and such other buildings as 339 may be designated by the 340 Board of Public Works upon 341 recommendation of the Board 342 of Control .....	347,000.00
343 Item 47: Morris Memorial 344 Hospital, for building to be 345 constructed on land to be deed- 346 ed to the State of West Vir- 347 ginia and to be operated by 348 Morris Memorial Hospital un-	

349 der such agreement as may be	
350 entered into by the Board of	
351 Control and Trustees of Mor-	
352 ris Memorial Hospital and ap-	
353 proved by the Governor and	
354 the Attorney General .....	100,000.00
355 Item 48: Berkeley Springs	
356 Sanitarium, for service system	
357 repairs, major building repairs	
358 and ground improvements and	
359 equipment as may be desig-	
360 nated by the Board of Public	
361 Works upon recommendation	
362 of the Board of Control .....	100,000.00
363 Item 49: Conservation Com-	
364 mission, for (1) Construction	
365 of bridge across Middle Island	
366 Creek from Route 18 to the 4-H	
367 Camp property in Tyler Coun-	
368 ty, \$50,000.00; (2) Improve-	
369 ment of road to bathhouse at	
370 Tygart Lake in Taylor Coun-	
371 ty, \$50,000; (3) Improvement	
372 of recreational area at Cabway-	
373 lingo State Park, \$150,000.00;	
374 (4) development of picnic and	
375 recreational areas in Kanawha	
376 State Forest, \$75,000.00; (5)	
377 purchase of land adjacent to	
378 Grandview State Park, \$29,-	
379 000.00; and for such other build-	
380 ings and improvements as may	
381 be designated by the Board of	
382 Public Works upon recommen-	
383 dation of the Conservation	
384 Commission .....	605,000.00
385 Item 50: Conservation Com-	
386 mission — Division of State	
387 Parks, for such buildings and	
388 improvements as may be desig-	
389 nated by the Board of Public	

390 Works upon recommendation of	
391 the Conservation Commission —	548,000.00
392 Item 51: Conservation Com-	
393 mission — Division of State	
394 Parks, for the acquisition of	
395 land and construction of park	
396 facilities and buildings for	
397 establishment of a state park,	
398 upon recommendation of the	
399 Conservation Commission and	
400 approval of the Joint Legis-	
401 lative Committee on Govern-	
402 ment and Finance .....	500,000.00
403 Item 52: State Armory	
404 Board, for construction and/or	
405 acquisition of new armories, in-	
406 cluding needed land acquisition,	
407 and for purchase and repair of	
408 buildings now used or to be	
409 used as armories .....	797,100.00
410 Item 53: Department of Ed-	
411 ucation, for state aid to counties	
412 for school building program, to	
413 be distributed by the State	
414 Board of School Finance on	
415 such basis as may be deter-	
416 mined by the Legislature .....	10,000,000.00
417 Item 54: Department of Ag-	
418 riculture, for acquisition or con-	
419 struction, including equipment	
420 of a poultry pathological labo-	
421 ratory .....	10,000.00
422 Item 55: Board of Public	
423 Works, Contingent Fund .....	784,000.00
424 The foregoing appropriation	
425 of \$784,000.00 may be ex-	
426 pended for the following pur-	
427 poses: (a) The amount of \$689,-	
428 000 may be released by the	
429 Board of Public Works only	
430 to the State Mental Institutions,	

431 in such amounts for each in-  
432 stitution as the Board may  
433 deem necessary for the proper  
434 and adequate treatment, care  
435 and maintenance of the patients  
436 therein, for expenditure by  
437 such institutions during the  
438 biennium for personal services,  
439 current expenses, and equip-  
440 ment. However, no greater  
441 amount shall be released to any  
442 such institution, including  
443 regular appropriations made by  
444 this act to it, than originally  
445 set forth in its budget requests;  
446 (b) To provide financial assist-  
447 ance for the maintenance and  
448 operation of the Colored Day  
449 Nursery and Child Shelter,  
450 Charleston, West Virginia, an  
451 institution for the care of or-  
452 phan and homeless colored  
453 children for whom the state  
454 does not provide adequate fa-  
455 cilities the sum of \$7,500.00 for  
456 each year of the biennium  
457 (c) To supplement appropria-  
458 tions for state aid to schools  
459 to insure that no county will  
460 receive less state aid for the fis-  
461 cal year 1949-50 than its alloca-  
462 tion for the fiscal year 1948-49  
463 and not to exceed in total  
464 amount the sum of \$40,000.00;  
465 (d) To provide financial as-  
466 sistance to the Morris Memo-  
467 rial Hospital in the amount of  
468 \$10,000.00 for each year of the  
469 biennium 1949-51; (e) To pro-  
470 vide financial assistance to Mar-  
471 met Hospital, Inc., in the

472 amount of \$7,500.00 for each  
473 year of the biennium 1949-51;  
474 (f) To provide financial assist-  
475 ance to the "Pines"-West Vir-  
476 ginia Foundation for Crippled  
477 Children, in the amount of  
478 \$2,500.00 for each year of the  
479 biennium 1949-51.

480 Item 56: State Road Commis-  
481 sion—Construction of Primary  
482 Roads, none of which may be  
483 used for the purchase of equip-  
484 ment \_\_\_\_\_

4,000,000.00

485 At the discretion of the board of public works an amount  
486 not in excess of ten per cent of any of the foregoing items  
487 may be released at any time within the biennium for the  
488 purpose or purposes of covering the expense of preliminary  
489 studies and surveys, for comprehensive over-all planning-  
490 of building and grounds of the state institutions, filing ap-  
491 plication for federal aid, and for the preparation of bidding  
492 documents for the construction of any building or build-  
493 ings covered by the item.

Sec. 6. *Reappropriations.*—The date for expiring unex-  
2 pended balances, if any, in the appropriations made by and  
3 under authority of section 3-a of the 1945 budget act as  
4 reappropriated by section 20 of the 1947 budget act, and  
5 appropriations made by and under authority of section 5  
6 of the 1947 budget act, subject to the limitations and can-  
7 cellations as shown in sub-section (a) herein, is hereby ex-  
8 tended to June 30, 1951 and such items are hereby reappro-  
9 priated from their respective dates of expiration to June 30,  
10 1951.

11 (a) The unreleased and unencumbered balances in items  
12 (8), (9), (11), (14), (17), (31) and (38), of section 3-a,  
13 of the 1945 budget act, as reappropriated, and the unre-  
14 leased and unencumbered balances in items (4), (11),  
15 (13), (14), (16), (18) and (20) of section 5 of the 1947  
16 Budget Act are hereby cancelled and are included in the  
17 amount of items of appropriation made under section 5 of  
18 this act. The date of expiration of the unexpended balance

19 in "excess collections" of all educational institutions for  
20 the fiscal year 1948-49 collected and deposited prior to July  
21 1, 1949, shall not be deemed to have expired but shall be  
22 available for expenditure within the biennium beginning  
23 July 1, 1949, except that no part of such excess collections  
24 hereby reappropriated shall be expended for personal  
25 services.

Sec. 7. *Special Revenue Appropriations.*—There is here-  
2 by appropriated for expenditure during the fiscal years  
3 one thousand nine hundred fifty and one thousand nine  
4 hundred fifty-one appropriations made by general law  
5 from special revenue which is not paid into the state fund  
6 as general revenue under the provisions of section two,  
7 article two, chapter twelve of the code of West Virginia,  
8 one thousand nine hundred thirty-one: *Provided, how-*  
9 *ever,* That collections after July 1, 1949 from the sale of  
10 farm and dairy products at all benevolent, penal, mental  
11 and correctional institutions shall be deposited to State  
12 Fund—General Revenue as regular collections: *Provided*  
13 *further,* That none of the moneys so appropriated by this  
14 section shall be available for expenditure except in compli-  
15 ance with and in conformity to the provisions of articles 2  
16 and 3, of chapter 12, code of West Virginia, and chapter 39,  
17 acts of the Legislature, regular session, one thousand nine  
18 hundred thirty-nine, and unless the spending unit has filed  
19 with the state director of the budget and the state auditor  
20 prior to the beginning of each fiscal year:

21 (a) An estimate of the amount and sources of all reve-  
22 nues accruing to such fund;

23 (b) A detailed expenditure schedule showing for what  
24 purposes the fund is to be expended.

Sec. 8. *Appropriations Revived and Extended.*—A part  
2 of an appropriation to a spending unit that remains unex-  
3 pended at the end of the fiscal year one thousand nine hun-  
4 dred fifty may, by order of the board of public works, be  
5 revived and extended only to meet unforeseen contingen-  
6 cies arising during the fiscal year one thousand nine hun-  
7 dred fifty-one.

Sec. 9. *Specific Statutory Appropriations.*—Whenever

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

Sec. 10. *Specific Funds and Collection Accounts.*—A fund  
2 or collection account, which by law is dedicated to a spe-  
3 cific use is hereby appropriated in sufficient amount to  
4 meet all lawful demands upon the fund or collection ac-  
5 count, and shall be expended according to the provisions  
6 of article three, chapter twelve of the code of West Vir-  
7 ginia, one thousand nine hundred thirty-one.

Sec. 11. *Appropriations for Refunding Erroneous Pay-*  
2 *ments.*—Money that has been erroneously paid into the  
3 state treasury is hereby appropriated out of the fund into  
4 which it was paid for refund to the proper person.  
5 When the officer authorized by law to collect money for  
6 the state finds that a sum has been erroneously paid he  
7 shall issue his requisition upon the auditor for the refund-  
8 ing of the proper amount. The auditor shall issue his war-  
9 rant to the treasurer and the treasurer shall pay the war-  
10 rant out of the fund into which the amount was originally  
11 paid.

Sec. 12. *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 gov-  
4 ernmental service and care for unexpected contingencies.  
5 A part of a contingent fund that remains unexpended at  
6 the end of the first fiscal year shall automatically become  
7 available for expenditure during the second fiscal year.  
8 The expenditure of the governor's civil contingent fund,  
9 and the legislative contingent funds shall not be condi-  
10 tioned upon the approval of the board of public works.

Sec. 13. *Sinking Fund Deficiencies.*—There is hereby ap-  
2 propriated to the board of public works a sufficient  
3 amount to meet a deficiency that may arise in the fund of  
4 the state sinking fund commission because of the failure  
5 of any state agency or local taxing district to remit funds  
6 necessary for the payment of interest and sinking fund  
7 requirements. The board of public works is authorized to  
8 transfer from time to time such amounts to the state sink-



9 ing fund commission as may be necessary for this purpose.  
10 The state sinking fund commission shall reimburse the  
11 State of West Virginia through the Board of Public Works  
12 from the first remittance collected from any state agency  
13 or local taxing district for which the board of public  
14 works advanced funds, with interest at the rate carried by  
15 the bonds for which the advance was made.

Sec. 14. *Appropriations from Taxes and License Fees.*—

2 There is hereby appropriated from all chain store tax fees  
3 and general license taxes collected by the state tax com-  
4 missioner, all necessary salaries and expenses, not to ex-  
5 ceed twenty-five per cent of the gross collections author-  
6 ized by law to be expended in the collection of such chain  
7 store tax fees and general license taxes. There is hereby  
8 appropriated from the cigarette tax for administration and  
9 enforcement of the law relating to said tax a sum not to  
10 exceed one and one-half per cent of the tax collected or  
11 stamps sold. All such salaries and expenses, authorized by  
12 law as aforesaid, shall be paid by the tax commissioner  
13 through the state treasurer out of gross collections.

Sec. 15. *Appropriations to Pay Premiums on Bonds of*

2 *County Clerks.*—There is hereby appropriated out of the  
3 general school fund, to be paid upon the requisition of  
4 the auditor, a sum sufficient to pay premiums on bonds  
5 of county clerks to protect funds belonging to the said  
6 general school fund, and out of the special revenue fund  
7 of the conservation commission, to be paid upon the requi-  
8 sition of the commissioner, a sum sufficient to pay pre-  
9 miums on bonds of county clerks to protect funds belong-  
10 ing to the said conservation commission.

Sec. 16. *Appropriations to Pay Costs of Publication of De-*

2 *linquent Corporations.*—There is hereby appropriated out  
3 of the state fund, general revenue, out of funds not other-  
4 wise appropriated to be paid upon requisition of the audi-  
5 tor and/or the governor, as the case may be, a sum suffi-  
6 cient to pay the cost of publication of delinquent corpora-  
7 tions as provided by sections seventy-five and seventy-  
8 seven of article twelve, chapter eleven, code of West Vir-  
9 ginia .

Sec. 17. *Appropriations for Local Governments.*—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 which have been paid into the treasury:

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

Sec. 18. *Printing Costs.*—The cost of printing, binding and stationery for each spending unit shall be paid from the current expense appropriation for the spending unit.

Sec. 19. *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, except as otherwise provided in Title I, Section 3.

Sec. 20. *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.
2. Limitation on spending.
4. Limitation on publicity.
5. Limitation on expenditures for insurance.
6. Constitutionality.

Section 1. *Appropriations Conditional.*—The expenditures 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 chapter thirty-nine, 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

4 with the provisions of this act is hereby suspended during  
5 the operation of this act.

Sec. 3. *Limitation on Spending.*—The appropriations  
2 made by this act are made for the maintenance and opera-  
3 tion of the departments, services, and institutions, humane,  
4 educational, eleemosynary, and penal, as heretofore estab-  
5 lished by the Legislature, and may be expended only for  
6 the maintenance and operation of the departments, ser-  
7 vices, and institutions as so established; and no part of any  
8 appropriation, including contingent and emergency appro-  
9 priations, made by this act for any institution, humane, ed-  
10 ucational, eleemosynary, or penal, shall be expended for  
11 any purpose or at any place other than for the maintenance  
12 and operation of such institution at the geographical place  
13 or location at which such institution has heretofore been  
14 established by the Legislature, and for no other purpose  
15 and at no other place: *Provided, however,* That where  
16 any appropriation appears in the name of an institution,  
17 the name of which has been changed by an act of this ses-  
18 sion of the Legislature, the funds appropriated for the old  
19 institution shall be applied to the institution operating un-  
20 der the new name and succeeding to the possession of the  
21 physical plant of the former institution, and any officer or  
22 person who shall expend or shall participate in the ex-  
23 penditure of any part of any appropriation made by this  
24 act in violation of any of the provisions hereof shall be per-  
25 sonally liable therefor.

Sec. 4. *Limitation on Publicity.*—Spending units other  
2 than the West Virginia industrial and publicity commis-  
3 sion, and the West Virginia apple commission shall not  
4 expend funds appropriated to them hereunder, or receiv-  
5 able as special revenues or otherwise as a result of acts  
6 of the Legislature, in advertising the state as a whole, or  
7 in the employment of personnel whose major duties are  
8 publicity or promotional work to that end. Spending units  
9 which conduct advertising or promotional work as a part  
10 of their functioning, shall, in any case where expenditures  
11 therefor exceed five hundred dollars, have the program  
12 first approved by the director of said commission before  
13 any expense in excess of five hundred dollars in any one

14 year is incurred: *Provided, however,* That no funds shall  
15 be spent by any agency, unit, department, state officer or  
16 employee, publicizing any individual, state officer or em-  
17 ployee.

Sec. 5. *Limitation on Expenditures for Insurance.*—Not  
2 more than ten per cent of the total amount which may be  
3 expended from all appropriations of this act for the pay-  
4 ment of premiums on fire, casualty or fidelity insurance  
5 shall be paid to insurance agents or agencies in any one  
6 county, and of such total amount not more than five per  
7 cent shall be paid to any one insurance agent or agency.

Sec. 6. *Constitutionality.*—If any part of this act is de-  
2 clared unconstitutional by a court of competent jurisdic-  
3 tion, its decision shall not affect any portion of this act  
4 which remains, but the remaining portions shall be in full  
5 force and effect as if the portion declared unconstitutional  
6 had never been a part of the act.



## CHAPTER 10

(Senate Bill No. 241—By Mr. Mitchell and Mr. Love)

AN ACT to amend and reenact section six, article one-a, chap-  
ter twenty-five of the code of West Virginia, one thousand  
nine hundred thirty-one, as amended, relating to the use  
of the funds in the farm sales fund account at the West Vir-  
ginia Industrial School for Boys.

[Passed March 7, 1949; in effect from passage. Approved by the Governor.]

### Article 1-a. Collection and Expenditure of Money Collected at State Institutions.

#### Section

6. Sale of excess farm and dairy products; expenditure of receipts directed and restricted; revenue from coal stripping at the West Virginia industrial school for boys; use of funds in the farm sales fund account.

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

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

Section 6. *Sale of Excess Farm and Dairy Products; Expenditure of Receipts Directed and Restricted; Revenue from Coal Stripping at the West Virginia Industrial School for Boys; Use of Funds in the Farm Sales Fund Account.*—The state board of control shall direct the sale of farm and dairy products of farms operated at the various state institutions, but only those products may be sold which cannot be consumed in the institution at which they are produced. The board shall endeavor to sell excess products to other state institutions.

The board of control is authorized to deposit all revenue heretofore or hereafter accruing from coal stripping on the farm of the West Virginia industrial school for boys at Pruntytown, West Virginia, in the farm sales fund of that institution. Such revenues, after they have been deposited in such fund, may be used as other moneys authorized by law deposited in such fund: *Provided, That* nothing contained in this section shall affect the validity of said coal stripping transactions.

The board of control is further authorized to use from this fund an amount not to exceed fifty thousand dollars for the purchase of necessary equipment and furniture for the boys' dormitories now under construction, and for the gymnasium and swimming pool.

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## CHAPTER 11

(House Bill No. 206—By Mr. Trent)

AN ACT to compensate Luther W. Gartin for personal injuries and to reimburse him for medical expenses incurred as a result of a sliver of steel imbedding itself in his right eye and a subsequent loss of sight in said eye.

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[Passed March 12, 1949; in effect July 1, 1949. Approved by the Governor.]

### Section

1. Appropriation for Luther W. Gartin.

WHEREAS, On February twenty-fifth, one thousand nine hundred forty-one, Luther W. Gartin, of Logan, Logan county,

West Virginia, was employed by the Logan county board of education as a carpenter; and

WHEREAS, While working on the Chambers school building in Logan, where he was taking a hinge off the front door of said building, a sliver of steel imbedded itself in his right eye; and

WHEREAS, As a result of such injury the sight of the right eye was immediately impaired and several months later a permanent loss of sight in said right eye occurred; and

WHEREAS, Luther W. Gartin necessarily incurred medical and other expenses; therefore,

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

Section 1. *Appropriation for Luther W. Gartin.*—It appearing from a statement of the revenues and appropriations for the fiscal year one thousand nine hundred forty-eight-one thousand nine hundred forty-nine, that there remains in the treasury, state fund general revenue, revenue in excess of the amount hereby appropriated, there is hereby appropriated from the treasury, state fund general revenue, the sum of two thousand two hundred thirty-nine dollars to Luther W. Gartin to compensate him for personal injuries suffered and to reimburse him for medical expenses incurred as a result of a sliver of steel imbedding itself in his right eye and a subsequent loss of sight in said eye while he was working for the Logan county board of education.

Sec. 2. *Finding of Moral Obligation.*—It is hereby declared to be the finding of the Legislature, based upon its conclusion of fact, that the appropriation made in section one hereof is for the payment of a moral obligation of the state of West Virginia.

## CHAPTER 12

(Com. Sub. for Senate Bill No. 42—Originating in the Senate Committee on Claims and Grievances)

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state, and

directing the auditor to issue warrants for the payment thereof.

[Passed March 9, 1949; in effect July 1, 1949. Approved by the Governor.]

Section

1. Finding and declaring certain claims against the state and its agencies to be moral obligations of the state, and directing payment thereof.

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

- Section 1. *Finding and Declaring Certain Claims Against the State and Its Agencies to Be Moral Obligations of the State, and Directing Payment Thereof.*—The Legislature has considered the findings of fact and recommendations reported to it by the court of claims concerning various claims against the state and the agencies thereof, and in respect to each of the following claims the Legislature adopts those findings of fact as its own, and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any funds appropriated and available for the purpose.
- (a) Claims versus State Auditor.
    - (1) Crescent Brick Company.....\$ 333.40
    - (2) Duncan W. Daugherty.....\$ 615.00
  - (b) Claim versus State Board of Control.
    - (1) Musgrove's Wholesale Grocery.....\$ 151.66
  - (c) Claims versus State Conservation Commission.
    - (1) Robert Ray Robinson, an infant.....\$2,000.00
    - (2) Lena J. Webb.....\$ 35.00
  - (d) Claims versus State Road Commission.
    - (1) George Slayton.....\$ 25.00
    - (2) Jack L. and Martha Hendrickson.....\$ 22.15
    - (3) Nellie O. Short.....\$ 43.90
    - (4) Zora Starcher, Bessie Starcher Cahill,  
and Nora Starcher Rexroad.....\$ 150.00
    - (5) William M. Knisely.....\$ 17.50
    - (6) Alex Farley.....\$ 100.00
    - (7) Eureka Pipe Line Company.....\$ 367.42
    - (8) Sim McGrady.....\$ 38.00
    - (9) Katherine Presson.....\$ 100.00

32	(10) Eureka Pipe Line Company.....	\$ 209.31
33	(11) Zackwell Cochran.....	\$ 40.00
34	(12) Lucille H. Moore.....	\$ 239.62
35	(13) Clark Bailey.....	\$ 50.00
36	(14) John H. Breedlove.....	\$ 210.73
37	(15) Thomas Saunders.....	\$ 300.00
38	(16) R. C. Whitaker and American Central	
39	Insurance Company.....	\$ 41.93
40	(17) Maud Clark.....	\$ 500.00
41	(18) Elizabeth Young.....	\$ 16.70
42	(19) Dee Jackson.....	\$ 100.00
43	(20) A. R. Sidell, M. D. ....	\$ 19.81
44	(21) S. P. Catron.....	\$1,250.00
45	(22) Sybil C. Light.....	\$ 540.00
46	(23) Elite Laundry Company.....	\$ 52.50
47	(24) Blanch Wilson.....	\$ 750.00
48	(25) George Wisman, James Wisman, Gae-	
49	net Wisman, Hazel Wood and Ed Wood	\$ 500.00
50	(e) Claims versus Department of Unemploy-	
51	ment Compensation.	
52	(1) Utilities Coal Company, a corporation	\$ 240.62
53	(2) Buffalo-Winifrede Coal Company, a	
54	corporation .....	\$ 52.05
55	(f) Claims versus West Virginia Board of Education.	
56	(1) Broadhead-Garrett Company, Inc.....	\$ 69.86
57	(2) Galperin Music Company.....	\$ 27.95

## CHAPTER 13

(Senate Bill No. 131—By Mr. Love)

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state, and directing the auditor to issue warrants for the payment thereof.

[Passed March 11, 1949; in effect July 1, 1949. Approved by the Governor.]

### Section

1. Finding and declaring claims of J. W. Coole and Alice E. McClung against the state to be moral obligations of the state, and directing payment thereof.



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

Section 1. *Finding and Declaring Claims of J. W. Coole and Alice E. McClung Against the State to Be Moral Obligations of the State, and Directing Payment Thereof.*—The Legislature has considered the findings of fact and recommendations reported to it by the court of claims concerning various claims against the state and the agencies thereof, and in respect to each of the following claims the Legislature adopts those findings of fact as its own and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any funds appropriated and available for the purpose.

McClung, Alice E.	\$ 1,440.00
Coole, J. W.	\$ 5,000.00

## CHAPTER 14

(Senate Bill No. 254—By Mr. Wylie)

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state, and directing the auditor to issue warrants for the payment thereof.

[Passed March 12, 1949; in effect July 1, 1949. Approved by the Governor.]

### Section

1. Finding and declaring claims of W. B. Jordan, et al, against the state to be moral obligations of the state, and directing payment thereof.

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

Section 1. *Finding and Declaring Claims of W. B. Jordan, et al, Against the State to Be Moral Obligations of the State, and Directing Payment Thereof.*—The Legislature of the state of West Virginia finds that W. B. Jordan and Lena Jordan and Betty Lou Jordan and W. B. Jordan, Jr., infants under the age of twenty-one years, were injured on

7 the second day of September, one thousand nine hundred  
 8 forty-five, while traveling in an automobile over the  
 9 state maintained highway (called the Bolt-Glen Daniel  
 10 highway) in Raleigh county, West Virginia, and that said  
 11 injuries were approximately caused by failure of state  
 12 employees to adopt and enforce proper precaution signs to  
 13 warn the traveling public upon said highway of the ap-  
 14 proaching of a road bridge which had been completely re-  
 15 moved by a maintenance crew for the purpose of re-con-  
 16 struction thereof, and hereby declare it to be the moral  
 17 obligation of the state to pay each of the claims of said  
 18 persons in the amount specified below, and directs the  
 19 auditor to issue warrants for the payment thereof out of  
 20 funds appropriated and available for the purpose.

21	W. B. Jordan .....	\$1,000.00
22	Lena Jordan .....	\$ 250.00
23	Betty Lou Jordan .....	\$ 250.00
24	W. B. Jordan, Jr. ....	\$ 250.00

## CHAPTER 15

(Senate Bill No. 277—By Mr. Love)

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state, and directing the auditor to issue warrants for the payment thereof.

[Passed March 12, 1949; in effect July 1, 1949. Approved by the Governor.]

### Section

1. Finding and declaring certain claims against the state road commission, the adjutant general's department and the state board of education to be moral obligations of the state, and directing payment thereof.

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

- Section 1. *Finding and Declaring Certain Claims Against the State Road Commission, the Adjutant General's Department and the State Board of Education to Be Moral Obligations of the State, and Directing Payment*

5 *Thereof.*—The Legislature has considered the findings of  
6 fact and recommendations reported to it by the court of  
7 claims concerning various claims against the state and  
8 the agencies thereof, and in respect to each of the follow-  
9 ing claims the Legislature adopts those findings of fact as  
10 its own, and hereby declares it to be the moral obligation  
11 of the state to pay each such claim in the amount specified  
12 below, and directs the auditor to issue warrants for the  
13 payment thereof out of any fund appropriated and avail-  
14 able for the purpose.

15 (a) Claims versus State Road Commission.

16	(1) Sarah Ann Brown.....	\$500.00
17	(2) Hewitt L. Cabell.....	\$226.07
18	(3) Clifford Leonard.....	\$ 56.62
19	(4) R. B. Lowe.....	\$217.67
20	(5) Grace Lycans.....	\$374.49
21	(6) A. S. Price.....	\$300.00
22	(7) James M. Weaver.....	\$ 16.00

23 (b) Claims versus Adjutant General's Department.

24	(1) Virginia S. Palmer.....	\$131.48
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25 (c) Claim versus State Board of Education.

26 (West Virginia Institute of Technology)

27	(1) Charleston Electrical Supply Company	\$300.00
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## CHAPTER 16

(House Bill No. 148—By Mr. Hudgins)

AN ACT to amend section ten, article three, chapter forty, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the filing of conditional sales contracts.

[Passed February 21, 1949: in effect ninety days from passage. Approved by the Governor.]

### Article 3. Conditional Sales.

#### Section

#### 10. Filing.

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

That section ten, article three, chapter forty of the code of

West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 10. *Filing*—The filing officer shall mark upon  
2 the contract or copy filed with him for record the day  
3 and hour of filing and shall file the contract or copy in  
4 his office for public inspection. He shall keep a separate  
5 book in which he shall enter the names of the seller  
6 and buyer, the date of the contract, the day and hour of  
7 filing, a brief description of the goods, the price named in  
8 the contract and the date of cancellation thereof, except  
9 that in entering the contracts mentioned in section eight  
10 of this article, the secretary of state shall record either  
11 the sum remaining to be paid upon the contract or the  
12 price of the goods. Such book shall be indexed under the  
13 names of both seller and buyer. For filing and entering  
14 such contract or copy, a fee of seventy-five cents shall  
15 be charged.

## CHAPTER 17

(House Bill No. 373—By Mr. Ballard, of Mercer)

AN ACT to provide for the submission to the voters of the state of an amendment to the constitution of the state, amending section thirty-three of article six thereof, relating to compensation of members of the Legislature.

[Passed March 10, 1949; in effect ninety days from passage. Approved by the Governor.]

### Compensation of Members of the Legislature Amendment.

#### Section

1. Submitting an amendment to the state constitution.
2. Amendment to be known as the "Compensation of Members of the Legislature 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 the State Con-*

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

#### PROPOSED AMENDMENT

##### Article 6—Section 33

##### Compensation of Members of the Legislature

Section 33. The members of the Legislature shall each receive for their services, the sum of one thousand dollars per annum, and ten cents for each mile traveled in going to and returning from the seat of government by the most direct route, and in addition thereto, shall receive ten dollars per day for each day's attendance upon any extended or extraordinary session of the Legislature. The Speaker of the House of Delegates and the President of the Senate shall each receive an additional compensation of five dollars per day for each day they shall act as presiding officer. No other allowance or emolument than that by this section provided shall directly or indirectly be made or paid to the members of either house for postage, stationery, newspapers, or any other purpose whatever.

Sec. 2. *Amendment to be Known as the "Compensation of Members of the Legislature Amendment".*—For convenience in referring to said proposed amendment, and in the preparation of the form of the ballot hereinafter provided for, said proposed amendment is hereby designated as the "Compensation of Members of the Legislature Amendment."

Sec. 3. *Form of Ballot; Election.*—For the purpose of enabling the voters of the state to vote on the question of said proposed amendment to the constitution at the said general election to be held in the year one thousand nine hundred fifty, the board of ballot commissioners of each county is hereby required to place upon,

7 and at the foot of, the official ballot to be voted at that  
8 election, the following:

9 Ballot on "Compensation of Members of the Legislature  
10 Amendment."

11 ☐ For ratification of Compensation of Members of the  
12 Legislature Amendment.

13 ☐ Against ratification of Compensation of Members of  
14 Legislature Amendment.

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

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

8 "We, the undersigned, who acted as commissioners (or  
9 canvassers, as the case may be) of the election held at  
10 Precinct No. \_\_\_\_\_, in the district of \_\_\_\_\_,  
11 in the county of \_\_\_\_\_, on the  
12 \_\_\_\_\_ day of \_\_\_\_\_, one thousand nine  
13 hundred fifty, upon the question of the ratification or  
14 rejection of the proposed constitutional amendment, do  
15 hereby certify that the result of said election is as fol-  
16 lows:

17 "For ratification of Compensation of Members of the  
18 Legislature Amendment \_\_\_\_\_ votes.

19 "Against ratification of Compensation of Members of the  
20 Legislature Amendment \_\_\_\_\_ votes.

21 "Given under our hands this \_\_\_\_ day of \_\_\_\_\_,  
22 one thousand nine hundred fifty."

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

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

44 "We, the board of canvassers of the county of \_\_\_\_\_,  
45 having carefully and impartially examined the returns  
46 of the election held in said county, in each district thereof,  
47 on the \_\_\_\_\_ day of November, one thousand nine hundred  
48 fifty, do certify that the results of the election in said  
49 county, on the question of the ratification or rejection of  
50 the proposed amendment is as follows:

51 "For ratification of Compensation of Members of the  
52 Legislature Amendment \_\_\_\_\_ votes.

53 "Against ratification of Compensation of Members of  
54 the Legislature Amendment \_\_\_\_\_ votes.

55 "Given under our hands this \_\_\_\_\_ day of \_\_\_\_\_,  
56 one thousand nine hundred fifty."

57 One of the certificates shall be filed in the office of the  
58 clerk of the county court, and the other forwarded by

59 mail to the secretary of state, who shall file and preserve  
60 the same until the day on which the result of said election  
61 in the state 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  
3 soon thereafter as practicable, the said certificates shall  
4 be laid before the governor, whose duty it shall be to  
5 ascertain therefrom the result of said election in the state,  
6 and declare the same by proclamation published in one or  
7 more newspapers printed at the seat of government. If  
8 a majority of the votes cast at said election upon said  
9 question be for ratification of said amendment, the pro-  
10 posed amendment so ratified shall be in force and effect  
11 from and after the time of such ratification, as part of the  
12 constitution of the state.

*Sec. 6. Publication of Proposed Amendment by Gov-*

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

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## CHAPTER 18

(Senate Bill No. 278—By Mr. Love)

AN ACT providing for the submission to the voters of the state  
of an amendment to section eight of article ten of the  
constitution of the state.

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[Passed March 12, 1949; in effect ninety days from passage. Approved by the  
Governor.]

### School Bond Amendment

#### Section

1. Submitting an amendment to the state constitution.



2. Amendment to be known as the "School Bond 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 the State Constitution.*—That the question of ratification or rejection of an amendment to the constitution of West Virginia shall be submitted to the voters of the state at the next general election to be held in the year one thousand nine hundred fifty, which proposed amendment is as follows:

That section eight, article ten of the constitution of West Virginia be amended so as to read as follows:

Section 8. No county, city, school district, or municipal corporation, except in cases where such corporations have already authorized their bonds to be issued, shall hereafter be allowed to become indebted, in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five per centum on the value of the taxable property therein to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness; nor without, at the same time, providing for the collection of a direct annual tax on all taxable property therein, in the ratio, as between the several classes or types of such taxable property, specified in section one of this article, separate and apart from and in addition to all other taxes for all other purposes, sufficient to pay, annually, the interest on such debt, and the principal thereof, within, and not exceeding thirty-four years. Such tax, in an amount sufficient to pay the interest and principal on bonds issued by any school district not exceeding in the aggregate three per centum of such assessed value, may be levied outside the limits fixed by section one of this article: *Provided*, That no debt shall be contracted under this section, unless all questions connected with the same, shall have been first submitted to a vote of the people, and have received three-fifths of all the votes cast for and against the same.

Sec. 2. *Amendment to be Known as the "School Bond*

2 *Amendment.*—For convenience in referring to said pro-  
3 posed amendment, and in the preparation of the form of  
4 the ballot hereinafter provided for, said proposed amend-  
5 ment is hereby designated as the “School Bond Amend-  
6 ment.”

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

9 Ballot on “School Bond Amendment.”

10 ☐ For ratification of School Bond Amendment.

11 ☐ Against ratification of School Bond Amendment.

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

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

8 “We, the undersigned, who acted as commissioners (or  
9 canvassers, as the case may be) of the election held at  
10 Precinct No. ...., in the district of ....., in the county  
11 of ....., on the ..... day of ....., one thousand nine

12 hundred fifty, upon the question of the ratification or  
13 rejection of the proposed constitutional amendment, do  
14 hereby certify that the result of said election is as follows:

15 "For ratification of School Bond Amendment\_\_\_\_votes.

16 "Against ratification of School Bond Amendment\_\_votes.

17 "Given under our hands this\_\_\_\_\_day of\_\_\_\_\_, one  
18 thousand nine hundred fifty."

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

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

40 "We, the board of canvassers of the county of\_\_\_\_\_,  
41 having carefully and impartially examined the returns  
42 of the election held in said county, in each district thereof,  
43 on the\_\_\_\_\_day of November, one thousand nine hun-  
44 dred fifty, do certify that the results of the election in  
45 said county, on the question of the ratification or rejec-  
46 tion of the proposed amendment is as follows:

47 "For ratification of School Bond Amendment\_\_\_\_votes.

48 "Against ratification of School Bond Amendment\_\_votes.

49 "Given under our hands this\_\_\_\_\_day of\_\_\_\_\_, one  
50 thousand nine hundred fifty."

51 One of the certificates shall be filed in the office of the  
52 clerk of the county court, and the other forwarded by

53 mail to the secretary of state, who shall file and preserve  
54 the same until the day on which the result of said elec-  
55 tion in the state 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  
3 as soon thereafter as practicable, the said certificates shall  
4 be laid before the governor, whose duty it shall be to  
5 ascertain therefrom the result of said election in the state,  
6 and declare the same by proclamation published in one or  
7 more newspapers printed at the seat of government. If a  
8 majority of the votes cast at said election upon said ques-  
9 tion be for ratification of said amendment, the proposed  
10 amendment so ratified shall be in force and effect from  
11 and after the time of such ratification, as part of the  
12 constitution of the state.

*Sec. 6. Publication of Proposed Amendment by Gov-*

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

## CHAPTER 19

(House Bill No. 398—By Mr. Trent)

AN ACT to provide for the submission to the voters of the state  
an amendment to the constitution of the state, to be known  
as the "Veterans' Bonus Amendment".

[Passed March 12, 1949; in effect ninety days from passage. Approved by the  
Governor.]

### **Veterans' \$90,000,000.00 Bonus Amendment.**

#### **Section**

1. Submitting "Veterans' \$90,000,000.00 Bonus Amendment" to the  
state constitution.

2. Amendment to be known as the "Veterans' \$90,000,000.00 Bonus 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 "Veterans' \$90,000,000.00 Bonus Amendment to the State Constitution.*—That the question of the ratification or rejection of an amendment to the constitution of West Virginia, proposed in accordance with the provisions of section two, article fourteen of said constitution, shall be submitted to the voters of the state at the next general election, to be held in the year one thousand nine hundred fifty, which proposed amendment is as follows:

**Veterans' Bonus Amendment**

The Legislature shall by law provide for the issuance and sale of state bonds, not to exceed in the aggregate ninety million dollars, which shall be in addition to all other state bonds heretofore authorized. The proceeds of such additional bonds, or so many thereof as may be necessary for the purpose, shall be used and appropriated solely for the purpose of paying a cash bonus to veterans of World War I and World War II. Such bonus shall be paid to all persons who rendered active service in the armed forces of the United States in World War I between the sixth day of April, one thousand nine hundred seventeen, and the eleventh day of November, one thousand nine hundred eighteen, both dates inclusive, or in World War II between the seventh day of December, one thousand nine hundred forty-one, and the second day of September, one thousand nine hundred forty-five, both dates inclusive, or in both such wars, who were bona fide residents of the state of West Virginia at the time of their entry into such service and for a period of at least six months prior thereto, who were not dishonorably discharged from such forces, and who within the periods specified above actively served in such armed forces for a period of at least ninety days. Such a bonus shall also be paid to any disabled veteran, otherwise

34 qualified, who was discharged within ninety days after  
35 entering the services because of a service connected dis-  
36 ability. The amount of such bonus shall be calculated  
37 on the basis of ten dollars for each month, or major frac-  
38 tion thereof, served within the territorial limits of the  
39 forty-eight states and the District of Columbia, and fif-  
40 teen dollars for each month, or major fraction thereof,  
41 served outside such limits, but such amount shall in no  
42 case exceed three hundred dollars for those who served  
43 only within the territorial limits specified above, and  
44 four hundred dollars for those who served outside such  
45 limits. The bonus to which any deceased veteran would  
46 be entitled, if living, shall be paid only to the following  
47 surviving relatives of such veteran, if such relatives are  
48 residents of this State when application for payment is  
49 made: Any unremarried widow, or if none, any child  
50 or children under the age of sixteen, or if none, any de-  
51 pendent parent or parents.

52 Whenever the Legislature shall provide for the issuance  
53 of any bonds under the authority of this amendment, it  
54 shall at the same time provide for the levy and collection  
55 of an additional cigarette tax, or an additional tax on  
56 nonintoxicating beer, or an additional charge on the sale  
57 of each bottle of wine and liquor, or an additional general  
58 consumers sales tax, or a graduated income tax, or any  
59 two or more thereof, in such amount as may be required  
60 to pay annually the interest on such bonds and the prin-  
61 cipal thereof within and not exceeding thirty years.

Sec. 2. *Amendment to be Known as the "Veterans'*  
2 *\$90,000,000.00 Bonus Amendment"*.—For convenience in  
3 referring to said proposed amendment, and in the prep-  
4 aration of the form of the ballot hereinafter provided for,  
5 said proposed amendment is hereby designated as the  
6 "Veterans' Ninety Million Dollars Bonus Amendment".

Sec. 3. *Form of Ballot; Election*.—For the purpose of  
2 enabling the voters of the state to vote on the question  
3 of said proposed amendment to the constitution at the  
4 said general election to be held in the year one thousand  
5 nine hundred fifty, the board of ballot commissioners

6 of each county is hereby required to place upon, and at  
7 the foot of, the official ballot to be voted at that election,  
8 the following:

9 Ballot on "Veterans' \$90,000,000.00 Bonus Amendment".  
10 (The Bonus Bonds to be Retired by Additional Taxes.)

11 ☐ For ratification of Veterans' \$90,000,000.00 Bonus  
12 Amendment.

13 ☐ Against ratification of Veterans' \$90,000,000.00 Bonus  
14 Amendment.

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

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

8 "We, the undersigned, who acted as commissioners  
9 (or canvassers, as the case may be) of the election held  
10 at Precinct No. \_\_\_\_\_, in the district of \_\_\_\_\_  
11 in the county of \_\_\_\_\_, on the \_\_\_\_\_  
12 day of \_\_\_\_\_, one thousand nine hun-  
13 dred fifty, upon the question of the ratification or rejec-  
14 tion of the proposed constitutional amendment, do here-  
15 by certify that the result of said election is as follows:

16 "For ratification of Veterans' Ninety Million Dollars  
17 Bonus Amendment \_\_\_\_\_ votes.

18 "Against ratification of Veterans' Ninety Million Dollars  
19 Bonus Amendment \_\_\_\_\_ votes.

20 "Given under our hands this \_\_\_\_\_ day of \_\_\_\_\_,  
21 one thousand nine hundred fifty."

22 The said two certificates shall correspond with each  
23 other in all respects and contain the full and true re-  
24 turns of said election at each place of voting on said  
25 question. The said commissioners, or any one of them  
26 (or said canvassers or any one of them, as the case may  
27 be), shall, within four days, excluding Sunday, after  
28 that on which said election was held, deliver one of  
29 said certificates to the clerk of the county court of his  
30 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  
33 the question of said proposed amendment, shall be laid  
34 before the commissioners of the county court at the court  
35 house at the same time the ballots, poll books, and the  
36 certificates of election of the members of the Legislature  
37 are laid before them; and as soon as the result of said  
38 election in the county upon the question of such ratifi-  
39 cation or rejection is ascertained, two certificates of such  
40 result shall be made out and signed by said commission-  
41 ers as a board of canvassers, in the form or to the following  
42 effect:

43 "We, the board of canvassers of the county of \_\_\_\_\_  
44 \_\_\_\_\_, having carefully and impartially examined  
45 the returns of the election held in said county, in each  
46 district thereof, on the \_\_\_\_\_ day of November, one  
47 thousand nine hundred fifty, do certify that the results  
48 of the election in said county, on the question of the  
49 ratification or rejection of the proposed amendment is  
50 as follows:

51 "For ratification of Veterans' Ninety Million Dollars  
52 Bonus Amendment \_\_\_\_\_ votes.

53 "Against ratification of Veterans' Ninety Million Dollars  
54 Bonus Amendment \_\_\_\_\_ votes.

55 "Given under our hands this \_\_\_\_\_ day of \_\_\_\_\_,  
56 one thousand nine hundred fifty."

57 One of the certificates shall be filed in the office of the



58 clerk of the county court, and the other forwarded by  
59 mail to the secretary of state, who shall file and pre-  
60 serve the same until the day on which the result of said  
61 election in the state is to be ascertained, as hereinafter  
62 stated.

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

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

—O—

## CHAPTER 20

(Com. Sub. for House Bill No. 209—Originating in the House Committee on  
the Judiciary)

AN ACT to amend and reenact section three, article one, chap-  
ter thirty-one of the code of West Virginia, one thousand  
nine hundred thirty-one, as amended, relating to powers,

compromises, reorganization and charitable contributions by corporations.

[Passed March 11, 1949; in effect ninety days from passage. Approved by the Governor.]

## Article 1. Provisions Relating to Corporations Generally.

### Section

3. Powers, provision for compromises and reorganizations.

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

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

Section 3. *Powers; Provision for Compromises and Re-organizations.*—Every corporation as such shall have succession by its corporate name for the time limited in its charter, and, if no time be limited, perpetually. It shall have a common seal and may renew or alter the same at pleasure. It may sue and be sued, complain and defend; contract and be contracted with, by simple contract or specialty; purchase, hold, use, grant, mortgage, pledge, encumber and lease real and personal estate and its franchises, unless forbidden by law; appoint officers and agents, prescribe their powers, duties and liabilities, take bond and security from any of them, and fix their compensation, make all lawful by-laws for the management of its property, the conduct of its business, and the pursuit of the purposes of its incorporation; and generally exercise all of the powers set forth in its charter and those enumerated in this article; and also do and perform every other act or thing not inconsistent with law which may be appropriate to promote and attain the objects and purposes set forth in its charter.

Any corporation created or existing under the laws of the state is hereby authorized by action of its board of directors to make contributions to or for the use or benefit of: The United States, any state, territory, or any political subdivision thereof or the District of Columbia, or any possession of the United States, for exclu-

28 sively public purposes; or a corporation, trust, or com-  
29 munity chest, fund, or foundation, created or organized  
30 in the United States, or in any possession thereof, or  
31 under the laws of the United States, or of any state or  
32 territory or of the District of Columbia or of any pos-  
33 session of the United States, organized and operated  
34 exclusively for religious, charitable, scientific, veterans  
35 rehabilitation service, literary or educational purposes,  
36 or for the prevention of cruelty to children, no part of  
37 the earnings of which inures to the benefit of any pri-  
38 vate shareholders or individuals, and no substantial part  
39 of the activities of which is carrying on propaganda, or  
40 otherwise attempting to influence legislation; or posts  
41 or organizations of war veterans, or auxiliary units of,  
42 or trusts or foundations for, any such posts or organi-  
43 zations, if such posts, organizations, units, trusts, or foun-  
44 dations are organized in the United States or any of  
45 its possessions, and if no part of their net earnings inures  
46 to the benefit of any private shareholder or individual.  
47 All contributions made heretofore by authority of the  
48 board of directors of the corporation for the purposes  
49 prescribed by this act are hereby ratified and con-  
50 firmed.

51 Every corporation created for profit, either under the  
52 general provisions of this chapter or under the special  
53 provisions and requirements thereof applicable to spe-  
54 cial classes of corporation, other than banking institu-  
55 tions, shall also have power to include in its agreement  
56 of incorporation the provisions, contained in subdivision  
57 (h) of section six of this article, for compromises and  
58 arrangements between the corporation so created and  
59 its creditors and/or stockholders and for reorganizations  
60 of such corporation in consequence of such compro-  
61 mises and arrangements. Whenever such provision is  
62 included in the original agreement of incorporation of  
63 any such corporation, all persons who become creditors  
64 or stockholders thereof shall be deemed to have become  
65 such creditors or stockholders subject in all respects  
66 to such provision and the same shall be absolutely bind-  
67 ing upon them; and whenever such provision is in-  
68 serted in the charter of any such corporation by an

69 amendment of such charter all persons who become  
70 creditors or stockholders of such corporation after such  
71 amendment shall be deemed to have become such cred-  
72 itors or stockholders subject in all respects to the said  
73 provision and the same shall be absolutely binding  
74 upon them. Every such corporation, in the charter of  
75 which is included or inserted the said provision con-  
76 tained in said subdivision (h) of section six shall be  
77 of such nature that any court of equitable jurisdiction  
78 within this state shall have power to administer and  
79 enforce such provision, and to restrain, pendente lite,  
80 all actions and proceedings against any such corpora-  
81 tion with respect to which the court so restraining shall  
82 have begun the administration and/or enforcement of  
83 such provision, and to appoint a temporary receiver or  
84 receivers for such corporation and to grant such re-  
85 ceiver or receivers such powers as shall be deemed  
86 proper.

## CHAPTER 21

(Senate Bill No. 140—By Mr. Eddy)

AN ACT to amend and reenact section three, article four-a, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the collection, payment and dishonor of demand items by banks and the revocation of credit for, and payment of, such items.

[Passed March 7, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 4-a. Bank Collection Code.

#### Section

3. Within what time provisional credit may be revoked.

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

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

Section 3. *Within What Time Provisional Credit May*

2 *Be Revoked.*—In any case in which a bank receives, other  
3 than for immediate payment over the counter, a demand  
4 item payable by, at or through such bank and gives  
5 credit therefor before midnight of the day of receipt,  
6 such credit shall be provisional and the bank may have  
7 until midnight of its next business day after receipt  
8 within which to dishonor or refuse payment of such item.  
9 Any credit so given together with all related entries on  
10 the books of the receiving bank may be revoked by  
11 returning the item, or if the item is held for protest or  
12 at the time is lost or is not in the possession of the bank,  
13 by giving written notice of dishonor, nonpayment, or  
14 revocation: *Provided*, That such item or notice is dis-  
15 patched in the mails or by other expeditious means not  
16 later than midnight of the bank's next business day  
17 after the item was received. For the purpose of deter-  
18 mining when notice of dishonor must be given or protest  
19 made under the law relative to negotiable instruments,  
20 an item duly presented, credit for which is revoked as  
21 authorized by this section, shall be deemed dishonored  
22 on the day the item or notice is dispatched. A bank,  
23 revoking credit pursuant to the authority of this sec-  
24 tion, shall be entitled to refund of, or credit for, the  
25 amount of the item.

26 For the purposes of this section: (a) An item received  
27 by a bank on a day other than its business day, or re-  
28 ceived on a business day after its regular business hours  
29 or during afternoon or evening periods when it has re-  
30 opened or remained open for limited functions, shall be  
31 deemed to have been received at the opening of its next  
32 business day; and (b) the term "credit" includes pay-  
33 ment, remittance, advice of credit or authorization to  
34 charge, and, in cases where the item is received for de-  
35 posit as well as for payment, also includes the making of  
36 appropriate entries to the receiving bank's general ledger  
37 without regard to whether the item is posted to indi-  
38 vidual customers' ledgers.

## CHAPTER 22

(Senate Bill No. 28—By Mr. Jackson, of Logan, by request)

AN ACT to amend and reenact section two, article eight, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the term, compensation, oath and bond of the commissioner of banking, the deputy commissioner of banking, bank examiners and assistant bank examiners.

[Passed March 12, 1949; in effect July 1, 1949. Approved by the Governor.]

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

#### **Section**

2. Terms; compensation; oath; bond.

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

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

Section 2. *Terms; Compensation; Oath; Bond.*—The  
2 commissioner of banking shall be appointed for a term of  
3 four years and until his successor is appointed and  
4 qualifies.

5 The deputy commissioner, bank examiners and as-  
6 sistants shall not be appointed for fixed and definite  
7 terms.

8 The commissioner of banking shall receive a salary of  
9 six thousand dollars a year; the deputy commissioner a  
10 salary not to exceed four thousand five hundred dollars  
11 a year; each bank examiner a salary not to exceed four  
12 thousand two hundred dollars a year; and each assistant  
13 bank examiner a salary not to exceed four thousand  
14 dollars a year. In addition to such salary, each of said  
15 officers shall be reimbursed for all moneys paid out  
16 by him as necessary expenses in the performance of his  
17 official duties. Each salary shall be payable in monthly  
18 installments.

19 The commissioner and deputy commissioner of bank-  
20 ing and each bank examiner and assistant bank examiner,  
21 before entering upon the discharge of his duties, shall take  
22 and subscribe the oath prescribed by section five, article  
23 four of the constitution.

24 The commissioner of banking shall enter into a bond  
25 in the penalty of twenty-five thousand dollars and the  
26 deputy commissioner and each bank examiner and as-  
27 sistant bank examiner shall enter into a bond in the  
28 penalty of five thousand dollars, with an indemnity com-  
29 pany as surety, conditioned for the faithful performance  
30 of his official duties. Such bonds shall be filed and re-  
31 corded in the office of the secretary of state. The pre-  
32 miums on such bonds shall be paid out of the state  
33 treasury.

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## CHAPTER 23

(House Bill No. 160—By Mr. Wilkison)

AN ACT to amend article eight, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section to be designated section eight-a, relating to photographing, photostating, microphotographing or reproducing on films, checks, documents, papers or other instruments or writings by banking institutions; permitting the introduction of such copies or reproductions as evidence before courts and administrative agencies and authorizing the destruction or other disposition of original checks, documents, papers and other records of banking institutions.

[Passed February 28, 1949; in effect from passage. Approved by the Governor.]

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

#### **Section**

8-a. Photographing and microphotographing bank checks and records; destruction of records.

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

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

Section 8-a. *Photographing and Microphotographing*

2 *Bank Checks and Records; Destruction of Records.—*

3 Any banking institution transacting business in this state  
4 may cause to be copied or reproduced by any photogra-  
5 phic, photostatic, microphotographic or other miniature  
6 photographic process, all or any number of its checks, and  
7 all or any part of its documents, books, records, corre-  
8 spondence and all other instruments, papers and writings,  
9 in any manner relating to the operation of its business,  
10 other than its notes, bonds, mortgages and other securities  
11 and investments, and may substitute such copies or repro-  
12 ductions either in positive or negative form for the orig-  
13 inal thereof. Thereafter, such copy or reproduction, in the  
14 form of a positive print thereof, shall be deemed for all  
15 purposes to be an original counterpart of and shall have  
16 the same force and effect as the original thereof and shall  
17 be admissible in evidence in all courts and administrative  
18 agencies in this state, to the same extent, and for the same  
19 purposes as the original thereof, and the banking institu-  
20 tion may destroy or otherwise dispose of the original: *Pro-*  
21 *vided, however,* That no banking institution shall destroy  
22 or otherwise dispose of its records of final entry, including  
23 cards used under the card system and deposit tickets for  
24 deposits made, for a period of at least six years from  
25 the date of the last entry on such books or the date of  
26 making of such deposit tickets and card records, or, in  
27 the case of a banking institution exercising trust or fidu-  
28 ciary powers, until the expiration of six years from the  
29 date of termination of any trust or fiduciary relationship  
30 by the allowance of a final accounting, release, court de-  
31 cree or other proper means of termination.

32 All circumstances surrounding the making or issuance  
33 of such checks, documents, records, instruments or writ-  
34 ings, or the photographic, photostatic or microphotogra-  
35 phic reproduction thereof, when the same are offered in



36 evidence, may be shown to affect the weight, but not  
37 the admissibility thereof.

38 Any device used to copy or reproduce such documents  
39 and records shall be one which correctly and accurately  
40 reproduces the original thereof in all details and film  
41 used therein shall be of durable material.

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## CHAPTER 24

(House Bill No. 159—By Mr. Wilkison)

AN ACT to amend and reenact section fifteen, article eight, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the annual meeting of stockholders of banking institutions; preparation and submission to stockholders of statements of the financial condition of banking institutions; the appointment by stockholders of an examining committee and prescribing the duties of such committee.

[Passed February 28, 1949; 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**

15. Annual meeting; financial statement; examining committee; appointment, duties and report.

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

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

- Section 15. *Annual Meeting; Financial Statement; Examining Committee; Appointment, Duties and Report.*  
3 —The stockholders of each banking institution shall meet  
4 annually and at such annual meeting it shall be the duty  
5 of the cashier or other executive officer of such banking  
6 institution to prepare and submit to the stockholders a

7 clear and concise statement of the financial condition of  
8 the corporation as of the close of business on the last day  
9 of the month next preceding. At such meeting, the  
10 stockholders present in person or by proxy shall, by  
11 majority vote, elect an examining committee composed  
12 of not less than three nor more than five persons, each  
13 of whom shall be a stockholder in such banking institu-  
14 tion. At such time or times as it may be directed to do  
15 so by the written request of the commissioner of bank-  
16 ing, such committee shall immediately proceed to exam-  
17 ine the condition of the bank and, upon completion of  
18 such examination, shall file its report in writing with the  
19 board of directors. Such report shall set forth in detail  
20 all items included in the assets of the bank which the  
21 committee has reason to believe are not of the value at  
22 which they appear on the books and records of the bank.  
23 and shall give the value of each of such items according  
24 to its judgment. The board shall cause such report to  
25 be recorded in the minute books of the bank and shall  
26 transmit a duly authenticated copy thereof to the com-  
27 missioner of banking. Should such committee deem it  
28 advisable, it may, with the consent and approval of the  
29 board of directors, employ competent accountants or audi-  
30 tors to make such examination or, if directed by the com-  
31 missioner of banking, shall make the same in conjunction  
32 with the regular examination of the banking department.  
33 The examiners of the banking department may require  
34 the presence of the examining committee or the executive  
35 committee during their examination.

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## CHAPTER 25

(House Bill No. 44—By Mr. Loop)

AN ACT to amend and reenact sections one, six, nineteen and twenty, article ten, all of chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, relating to credit unions.

[Passed March 7, 1949; in effect from passage. Approved by the Governor.]

## Article 10. Credit Unions.

### Section

1. Credit unions, who may form; agreement; by-laws, charter, approved by commissioner of banking, filing, certificate of authority; form of incorporation and by-laws prescribed by commissioner of banking.
6. Supervision by and reports to commissioner of banking; examinations.
19. Security for loans to members; application for loan by members of credit committee; illegal to loan to non-members.
20. Reserve fund, of what constituted; increase or decrease.

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

That sections one, six, nineteen and twenty, article ten, all of chapter thirty-one, of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted to read as follows:

#### Section 1. *Credit Unions, Who May Form; Agreement;*

2 *By-Laws, Charter, Approval by Commissioner of Banking,*  
3 *Filing, Certificate of Authority; Form of Incorporation and*  
4 *By-Laws Prescribed by Commissioner of Banking.*—Any  
5 eight persons, residents of the state of West Virginia and  
6 having a common bond of occupation or association, may  
7 apply to the secretary of state for permission to organize  
8 a credit union. A credit union shall be organized in the  
9 following manner:

10 (a) The applicants shall execute in duplicate an incor-  
11 poration agreement by the terms of which they agree to  
12 be bound. The agreement shall state:

13 (1) The name of the proposed credit union;

14 (2) The post-office address of its principal office or place  
15 of business;

16 (3) The names and post-office addresses of the incor-  
17 porators, and the number of shares subscribed by each;

18 (4) The total number of shares of stock which the credit  
19 union shall have authority to issue and the par value of  
20 each share, which par value shall not exceed ten dollars.

21 (b) The applicants shall then prepare and adopt by-  
22 laws for the general government of the credit union con-

23 sistent with the provisions of this article and execute the  
24 same in duplicate. The by-laws shall specify:

25 (1) The date of the annual meeting, which shall be in  
26 January of each calendar year, requirements as to notice  
27 and manner of conducting such meeting;

28 (2) The number of directors, which shall be not less  
29 than five, all of whom must be shareholders and members  
30 of the credit union, their powers and duties; and the com-  
31 pensation and duties of all officers;

32 (3) The conditions and qualifications for membership;

33 (4) The number of members of the credit committee  
34 and of the supervisory committee, with their respective  
35 powers and duties;

36 (5) The conditions upon which shares may be issued,  
37 transferred and withdrawn;

38 (6) The charges, if any, to be made for failure to meet  
39 obligations punctually;

40 (7) The conditions upon which deposits may be received  
41 and withdrawn, and whether the credit union shall have  
42 the power to borrow;

43 (8) The manner in which the funds of the credit union  
44 shall be invested;

45 (9) The conditions upon which loans may be made and  
46 repaid;

47 (10) The method of receipting for money paid in on ac-  
48 count of shares, deposits and loans;

49 (11) The manner in which the reserve fund shall be  
50 accumulated;

51 (12) The manner in which dividends shall be deter-  
52 mined and paid out.

53 (c) The agreement and by-laws, both executed in du-  
54 plicate, shall be forwarded to the secretary of state;

55 (d) The secretary of state, within thirty days after the  
56 receipt of such agreement, shall determine whether it con-  
57 forms to the provisions of this article, and whether or not  
58 the organization of the credit union in question would  
59 benefit the organizers of it, and be consistent with the  
60 purposes of this article;

61 (e) Thereupon the secretary of state shall notify the  
62 applicants of his decision. If it is favorable, he shall issue

63 a charter, attach the charter to the duplicate of the agree-  
64 ment and return the same, together with the duplicate of  
65 the by-laws to the applicants: *Provided, however, That*  
66 the secretary of state shall issue no charter to any credit  
67 union to do business in this state until such incorporation  
68 agreement and by-laws have been approved in writing by  
69 the commissioner of banking;

70 (f) The applicants shall thereupon file such charter in  
71 the office of the clerk of the county court of the county in  
72 which the principal office of the credit union is to be  
73 located, and such clerk shall record such charters, the  
74 usual fees to be charged for such recordation;

75 (g) When any credit union authorized by this article  
76 desires to begin business, it must notify the commissioner  
77 of banking, who shall at his earliest convenience make  
78 an examination of its affairs. Having satisfied himself  
79 that all the conditions precedent have in good faith been  
80 complied with, said commissioner shall then issue to such  
81 credit union, under his hand, and official seal, a certifi-  
82 cate of authority reciting that such examination has been  
83 made and that the credit union is authorized to commence  
84 business, which certificate shall be displayed in the busi-  
85 ness place of such credit union. But the commissioner  
86 may withhold from any credit union his certificate au-  
87 thorizing the commencement of business whenever he has  
88 reason to suppose that the members have formed the same  
89 for any other than the legitimate objects contemplated in  
90 this article.

91 In order to simplify the organization of credit unions,  
92 the commissioner of banking shall cause to be prepared  
93 an approved form of incorporation agreement and form of  
94 by-laws consistent with this article, which may be used  
95 by credit union incorporators for their guidance and, upon  
96 written request of any resident of the state of West Vir-  
97 ginia, the commissioner of banking shall supply such resi-  
98 dent with two blank incorporation agreements and two  
99 copies of such form of suggested by-laws free of charge.

Sec. 6. *Supervision by and Reports to Commissioner of*  
2 *Banking; Examinations.*—Credit unions shall be under  
3 the supervision of the commissioner of banking. They

4 shall report to him at least semi-annually on or before  
5 the first day of January and the first day of July of  
6 each calendar year, on blanks supplied by the said  
7 commissioner for that purpose. Additional reports  
8 may be required by said commissioner. Credit unions  
9 shall be examined annually by the commissioner of  
10 banking, except that, if a credit union has assets of  
11 less than twenty-five thousand dollars, he may accept  
12 the audit of a certified public accountant in place of such  
13 examination. The fee for such examination shall be ten  
14 dollars for credit unions with assets less than five thousand  
15 dollars; fifteen dollars for credit unions with assets of  
16 more than five thousand dollars but less than twenty-five  
17 thousand dollars; twenty-five dollars for credit unions  
18 with assets of more than twenty-five thousand dollars but  
19 less than fifty thousand dollars; thirty-five dollars for  
20 credit unions with assets of more than fifty thousand  
21 dollars but less than one hundred thousand dollars; and  
22 fifty dollars for credit unions with assets of over one hun-  
23 dred thousand dollars.

*Sec. 19. Security for Loans to Members; Application for*

2 *Loan by Members of Credit Committee; Illegal to Loan*  
3 *to Non-Members.*—As provided in section eighteen of this  
4 article, a credit union may loan to its members for such  
5 purposes and upon such security and terms as the by-  
6 laws shall provide and the credit committee shall approve;  
7 but security must be taken for any loan in excess of three  
8 hundred dollars. Endorsement of a note or assignment of  
9 shares in any credit union shall be deemed security with-  
10 in the meaning of this section.

11 A member who needs funds with which to purchase  
12 necessary supplies for growing crops may receive a loan  
13 in fixed monthly installments instead of in one sum.

14 If any member of the credit committee makes applica-  
15 tion to borrow money from a credit union or becomes  
16 surety for any other member whose application for a loan  
17 is under consideration, the supervisory committee shall  
18 appoint a substitute to act on the credit committee in the  
19 place of such member, during the consideration of such  
20 application. All officers and members of any committee  
21 in any way knowingly permitting or participating in

22 making a loan of funds of a credit union to a non-member  
23 thereof shall be guilty of a misdemeanor. The credit  
24 union shall have the right to recover the amount of any  
25 such illegal loan from the borrower or from any officer  
26 or member of a committee who knowingly committed or  
27 participated in the making thereof, or from all of them  
28 jointly.

29 A borrower may repay the whole or any part of his  
30 loan on any day on which the office of the corporation is  
31 open for the transaction of business.

Sec. 20. *Reserve Fund, of What Constituted; Increase or Decrease.*—All entrance fees, transfer fees and charges shall, after the payment of organization expenses, be known as reserve income, and shall be added to the reserve fund of the corporation. At the close of each fiscal year there shall be set apart to the reserve fund ten per cent of the net income of the corporation which has accumulated during the year. But upon the recommendation of the board of directors, the members at an annual meeting may increase, and whenever such funds equal twenty per cent of the capital, may decrease, the proportion of profits which is required by this section to be set apart to the reserve fund.

14 The reserve fund shall belong to the corporation and  
15 shall be held to meet contingencies, and shall not be distributed to the members, except upon dissolution of the corporation.

18 All acts or parts of acts in conflict herewith are hereby  
19 repealed.

— C —

## CHAPTER 26

(House Bill No. 258—By Mr. Robinson)

AN ACT to amend and reenact section three-a, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to powers with respect to construction of sewers, etc.

[Passed February 28, 1949; in effect from passage. Approved by the Governor.]

## Article 1. County Courts Generally.

### Section

3-a. Powers with respect to construction of sewers, etc.

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

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

Section 3-a. *Powers with Respect to Construction of Sewers, etc.*—In addition to all other powers and duties now conferred by law upon county courts, such courts are hereby authorized and empowered to install, construct, repair, maintain and operate water works, water mains, sewer lines and sewage disposal plants in connection therewith within their respective counties: *Provided*, That the county court of Webster is authorized to expend county funds in the opening of, and upkeep of, a sulphur well now situate on county property: *Provided*, That such authority and power as herein conferred upon county courts shall not extend into the territory within any municipal corporation: *Provided, however*, That any county court is hereby authorized to enter into contracts or agreements with any municipality within the county, or with a municipality in an adjoining county, with reference to the exercise of the powers vested in such court by this section.

## CHAPTER 27

(Com. Sub. for House Bill No. 46—Originating in the House Committee on the Judiciary)

A BILL to amend and reenact section five and sections five-(one) to section five-(fifty-four), inclusive, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended and reenacted by chapter fourteen, acts of the Legislature, regular session, one thousand nine hundred forty-one, and as further



amended by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred forty-three, as further amended by chapter thirty-three, acts of the Legislature, regular session, one thousand nine hundred forty-five, and as last amended and reenacted by chapter forty-five, acts of the Legislature, regular session, one thousand nine hundred forty-seven, relating to compensation of county commissioners for services other than services in court.

[Passed March 12, 1949: in effect from passage. Approved by the Governor.]

### **Article 1. County Courts Generally.**

#### **Section**

5. Duties of county commissioners and payment for services other than services in court.
- 5-(1) to 5-(54). Salaries of county commissioners of the various counties of the state.

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

That section five and sections five-(one) to section five-(fifty-four), inclusive, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended and reenacted by chapter fourteen, acts of the Legislature, regular session, one thousand nine hundred forty-one, and as further amended by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred forty-three, as further amended by chapter thirty-three, acts of the Legislature, regular session, one thousand nine hundred forty-five, and as last amended and reenacted by chapter forty five, acts of the Legislature, regular session, one thousand nine hundred forty-seven, be amended and reenacted to read as follows:

- Section 5. *Duties of County Commissioners and Payment for Services other Than Services In Court.*—It shall
- 2 be the duty of the county commissioners of each county
  - 3 to visit each quarter and inspect institutions within their
  - 4 county for housing and caring for the poor, to inspect
  - 5 the jails, and to arrange for the feeding and care of the
  - 6 prisoners therein, and to investigate the conditions of
  - 7 the poor within their county not housed within such
  - 8

9 institutions; to visit detention homes for children within  
10 their counties, if any, and to visit and inspect bridges  
11 and bridge approaches under their control; to provide  
12 for and have general supervision over the repair and  
13 maintenance of the county courthouse, jails, houses for  
14 the poor and other county property, so as to prevent the  
15 undue deterioration thereof; to supervise and control  
16 the maintenance and operation of airport or airports  
17 owned and/or operated by the county court; and to  
18 supervise and control the purchase, erection and main-  
19 tenance of airport facilities; to supervise and control the  
20 purchase of furniture, fixtures and equipment, and jan-  
21 itors' and other supplies, for their county; to attend the  
22 annual meeting of county assessors, and such district  
23 meetings as may be called by the state tax commissioner,  
24 on matters pertaining to the work of the county assessors  
25 and county courts as boards of review and equalization;  
26 to review and equalize the assessments made by the as-  
27 sessors; to inspect and review the lists of property, both  
28 real and personal, made up by the assessor and his  
29 deputies for taxable purposes, and to point out to the  
30 assessor any property, real or personal, which the said  
31 assessors of their respective counties may have over-  
32 looked or omitted to place on said tax lists; to call to the  
33 attention of the assessor all real estate or personal prop-  
34 erty belonging to churches, lodges, schools or other  
35 charitable institutions which may have been overlooked  
36 or omitted by the assessor or his deputies in making up  
37 his lists of property for entry on the land and personal  
38 property books. to cooperate with the county public as-  
39 sistance council and supervise the general management  
40 of the fiscal affairs and business of each county.

41 Compensation shall be allowed and paid out of the  
42 county treasury, in the same manner as salaries are paid,  
43 to each county commissioner of each county (except as  
44 otherwise provided by law for the county of Ohio), for  
45 services performed for such county concerning the vis-  
46 iting of the poor, inspection of jails, bridges and bridge  
47 approaches, and for visiting detention homes for children;  
48 and for providing for and supervising the repair and

49 maintenance of the county courthouse, jails, houses for  
50 the poor, and other county property, for supervising and  
51 controlling the maintenance and operation of airport or  
52 airports owned and/or operated by the county court;  
53 and supervising and controlling the purchase, erection  
54 and maintenance of airport facilities; and for supervising  
55 and controlling the purchase of furniture, fixtures and  
56 equipment and janitors' and other supplies of their county;  
57 and for attending the annual meeting of assessors and  
58 such district meetings as may be called by the state tax  
59 commissioner, on matters pertaining to the work of as-  
60 sessors and county courts as boards of review and equal-  
61 ization; for reviewing and equalizing the assessments  
62 made by the assessors; for inspecting and reviewing the  
63 lists of property, both real and personal, made up by  
64 the assessor and his deputies for taxable purposes, and  
65 for pointing out to the assessor any property, real or  
66 personal, which the said assessors of their respective  
67 counties may have overlooked or omitted to place on  
68 said tax lists; for calling to the attention of the assessor  
69 all real estate or personal property belonging to churches,  
70 lodges, schools or other charitable institutions which may  
71 have been overlooked or omitted by the assessor or his  
72 deputies in making up his lists of property for entry on  
73 the land and personal property books; and for duties of  
74 the county commissioners in cooperating with the county  
75 public assistance council, and for supervising the general  
76 management of the fiscal affairs and business of each  
77 county, within their counties, and other business by such  
78 commissioners, in addition to compensation for services  
79 in court, the sums of money hereinafter provided in the  
80 following sections five-(one) to five-(fifty-four), in-  
81 clusive.

2     Sec. 5-(1). *Barbour County*.—For the county of Bar-  
bour, fifty dollars per month.

2     Sec. 5-(2). *Berkeley County*.—For the county of Berke-  
ley, the president of the court seventy-five dollars and  
3     the other members of the court fifty dollars per month.

2     Sec. 5-(3). *Boone County*.—For the county of Boone,  
seventy-five dollars per month.

2      Sec. 5-(4). *Braxton County*.—For the county of Braxton, sixty dollars per month.

2      Sec. 5-(5). *Brooke County*.—For the county of Brooke, seventy-five dollars per month.

2      Sec. 5-(6). *Cabell County*.—For the county of Cabell, two hundred dollars per month.

2      Sec. 5-(7). *Calhoun County*.—For the county of Calhoun, thirty-five dollars per month.

2      Sec. 5-(8). *Clay County*.—For the county of Clay, thirty-five dollars per month.

2      Sec. 5-(9). *Doddridge County*.—For the county of Doddridge, thirty-five dollars per month.

2      Sec. 5-(10). *Fayette County*.—For the county of Fayette, the president of the court two hundred twenty-five dollars  
3      and the other members of the court two hundred dollars.

2      Sec. 5-(11). *Gilmer County*.—For the county of Gilmer, fifty dollars per month.

2      Sec. 5-(12). *Grant County*.—For the county of Grant, thirty dollars per month.

2      Sec. 5-(13). *Greenbrier County*.—For the county of Greenbrier, seventy-five dollars per month.

2      Sec. 5-(14). *Hampshire County*.—For the county of Hampshire, twenty-five dollars per month.

2      Sec. 5-(15). *Hancock County*.—For the county of Hancock, one hundred dollars per month.

2      Sec. 5-(16). *Hardy County*.—For the county of Hardy, fifty dollars per month.

2      Sec. 5-(17). *Harrison County*.—For the county of Harrison, two hundred twenty-five dollars per month.

2      Sec. 5-(18). *Jackson County*.—For the county of Jackson, twenty-five dollars per month.

2      Sec. 5-(19). *Jefferson County*.—For the county of Jefferson, fifty dollars per month.

2       Sec. 5-(20). *Kanawha County*.—For the county of Ka-  
nawha, three hundred fifty dollars per month.

2       Sec. 5-(21). *Lewis County*.—For the county of Lewis,  
one hundred dollars per month.

2       Sec. 5-(22). *Lincoln County*.—For the county of Lincoln,  
one hundred twenty-five dollars per month.

2       Sec. 5-(23). *Logan County*.—For the county of Logan,  
two hundred dollars per month.

2       Sec. 5-(24). *Marion County*.—For the county of Marion,  
the president of the county court two hundred fifty  
3 dollars and the other members of the court two hundred  
4 twenty-five dollars per month.

2       Sec. 5-(25). *Marshall County*.—For the county of Mar-  
shall, one hundred dollars per month.

2       Sec. 5-(26). *Mason County*.—For the county of Mason,  
forty dollars per month.

2       Sec. 5-(27). *McDowell County*.—For the county of Mc-  
Dowell, two hundred dollars per month.

2       Sec. 5-(28). *Mercer County*.—For the county of Mercer,  
the president of the court two hundred dollars and the  
3 other members of the court one hundred seventy-five  
4 dollars per month.

2       Sec. 5-(29). *Mineral County*.—For the county of Min-  
eral, fifty dollars per month.

2       Sec. 5-(30). *Mingo County*.—For the county of Mingo,  
one hundred seventy-five dollars per month.

2       Sec. 5-(31). *Morgan County*.—For the county of Mor-  
gan, fifty dollars per month.

2       Sec. 5-(32). *Monroe County*.—For the county of Monroe,  
twenty-five dollars per month.

2       Sec. 5-(33). *Monongalia County*.—For the county of  
Monongalia, two hundred dollars per month.

2       Sec. 5-(34). *Nicholas County*.—For the county of Nicho-  
las, fifty dollars per month.

2     Sec. 5-(35). *Pendleton County*.—For the county of Pendleton, twenty-five dollars per month.

2     Sec. 5-(36). *Pleasants County*.—For the county of Pleasants, twenty-five dollars per month.

2     Sec. 5-(37). *Pocahontas County*.—For the county of Pocahontas, twenty-five dollars per month.

2     Sec. 5-(38). *Preston County*.—For the county of Preston, the president of the county court fifty-five dollars,  
3     and other members of the court forty dollars per month.

2     Sec. 5-(39). *Putnam County*.—For the county of Putnam, forty-five dollars per month.

2     Sec. 5-(40). *Raleigh County*.—For the county of Raleigh, the president of the county court one hundred seventy-five dollars per month and other members of the  
3     court one hundred sixty dollars per month.  
4

2     Sec. 5-(41). *Randolph County*.—For the county of Randolph, seventy-five dollars per month.

2     Sec. 5-(42). *Ritchie County*.—for the county of Ritchie, fifty dollars per month.

2     Sec. 5-(43). *Roane County*.—For the county of Roane, forty dollars per month.

2     Sec. 5-(44). *Summers County*.—For the county of Summers, forty-five dollars per month.

2     Sec. 5-(45). *Taylor County*.—For the county of Taylor, forty-five dollars per month.

2     Sec. 5-(46). *Tucker County*.—For the county of Tucker, twenty-five dollars per month.

2     Sec. 5-(47). *Tyler County*.—For the county of Tyler, fifty dollars per month.

2     Sec. 5-(48). *Upshur County*.—For the county of Upshur, thirty dollars per month.

2     Sec. 5-(49). *Wayne County*.—For the county of Wayne, one hundred fifty dollars per month.

2      Sec. 5-(50). *Webster County*.—For the county of Webster, fifty dollars per month.

2      Sec. 5-(51). *Wetzel County*.—For the county of Wetzel, sixty-five dollars per month.

2      Sec. 5-(52). *Wirt County*.—For the county of Wirt, thirty dollars per month.

2      Sec. 5-(53). *Wood County*.—For the county of Wood, one hundred fifty dollars per month.

2      Sec. 5-(54). *Wyoming County*.—For the county of Wyoming, one hundred dollars per month.

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## CHAPTER 28

(House Bill No. 172—By Mr. Isaacs)

AN ACT to amend and reenact section two, article four, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended and reenacted by chapter thirty-five, acts of the Legislature, regular session, one thousand nine hundred forty-five, relating to rewards and detection of crime; bounties.

[Passed February 23, 1949; in effect ninety days from passage. Approved by 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, as last amended and reenacted by chapter thirty-five, acts of the Legislature, regular session, one thousand nine hundred forty-five, be amended and reenacted to read as follows:

Section 2. *Rewards and Detection of Crime; Bounties.*—

2 The prosecuting attorney of any county, with the approval

3 of the county court, or of the governor, or of the court of  
4 the county vested with authority to try criminal offenses,  
5 or of the judge thereof in vacation, may, within his discretion,  
6 offer rewards for the apprehension of persons  
7 charged with crime, or may expend money for the detection  
8 of crime. Any money expended under this section  
9 shall, when approved by the prosecuting attorney, be paid  
10 out of the county fund, in the same manner as other county  
11 expenses are paid. The county court may also offer  
12 reasonable bounties and rewards for the destruction of  
13 noxious animals, birds of prey, or weeds in the county,  
14 payable out of the county treasury: *Provided, however,*  
15 That nothing herein shall permit or give to the prosecuting  
16 attorney of any county, having a population according  
17 to the last official census of sixty thousand or less, the  
18 right to appoint a full-time investigator or detector of  
19 crime, or to expend any money for the investigation of  
20 any crime committed in his county beyond the actual  
21 expense of the investigation of said crime, except in the  
22 counties of Wayne and Wyoming, the prosecuting attorney  
23 with the consent of the circuit judge and the county  
24 court therein, may appoint an investigator of crime to be  
25 paid an annual salary of not less than one thousand two  
26 hundred dollars nor more than two thousand four hundred  
27 dollars, and actual expenses, the salary to be fixed within  
28 these limits by the county court; except further in the  
29 county of Lincoln, the prosecuting attorney may appoint  
30 an investigator of crime to be paid an annual salary of not  
31 less than one thousand two hundred dollars nor more than  
32 two thousand four hundred dollars, and actual expenses,  
33 the salary within these limits to be fixed by the prosecuting  
34 attorney; except further in the county of Mason, the  
35 prosecuting attorney with the consent of the county court  
36 or the circuit judge, may appoint an investigator of crime  
37 to be paid a salary of not less than six hundred dollars  
38 nor more than two thousand four hundred dollars and  
39 actual expenses, the salary to be fixed within these limits  
40 by the county court.



## CHAPTER 29

(Com. Sub. for House Bill No. 115—Originating in the House Committee on Counties, Districts and Municipalities)

AN ACT to amend and reenact section one, sections one-(one) to one-(fifty-five), inclusive; section two, sections two-(one) to two-(fifty-two), inclusive; section three, sections three-(one) to three-(fifty-two), inclusive, and section four, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and as last amended by chapter forty-six and chapter forty-eight, acts of the Legislature, regular session, one thousand nine hundred forty-seven, relating to salaries of sheriff, county clerk and circuit clerk.

[Passed March 12, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 7. Salaries; Deputies and Assistants and Their Salaries.

#### Section

##### 1. Salaries of sheriffs.

1-(1) to 1-(55). Salaries of sheriffs of the various counties of the state.

##### 2. Salaries of county clerks.

2-(1) to 2-(52). Salaries of county clerks in the various counties of the state.

##### 3. Salaries of circuit clerks.

3-(1) to 3-(52). Salaries of circuit clerks in the various counties of the state.

##### 4. Salaries of joint clerks of county and circuit courts.

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

That section one, sections one-(one) to one-(fifty-five), inclusive; section two, sections two-(one) to two-(fifty-two), inclusive; and section three, sections three-(one) to three-(fifty-two), inclusive, and section four, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1. *Salaries of Sheriffs.*—The annual compensation of the sheriff of each county shall on and after January first, one thousand nine hundred fifty-three, be in the amount set forth in sections one-(one) to one-(fifty-five), inclusive, of this article.

2      Sec. 1-(1) *Barbour County*.—For the county of Barbour,  
2      two thousand five hundred dollars.

2      Sec. 1-(2) *Berkeley County*.—For the county of Berke-  
2      ley, four thousand dollars.

2      Sec. 1-(3) *Boone County*.—For the county of Boone,  
2      three thousand six hundred dollars.

2      Sec. 1-(4) *Braxton County*.—For the county of Braxton,  
2      four thousand dollars.

2      Sec. 1-(5) *Brooke County*.—For the county of Brooke,  
2      three thousand six hundred dollars.

2      Sec. 1-(6) *Cabell County*.—For the county of Cabell,  
2      seven thousand five hundred dollars.

2      Sec. 1-(7) *Calhoun County*.—For the county of Calhoun,  
2      two thousand dollars.

2      Sec. 1-(8) *Clay County*.—For the county of Clay, two  
2      thousand dollars.

2      Sec. 1-(9) *Doddridge County*.—For the county of Dod-  
2      dridge, two thousand five hundred dollars.

2      Sec. 1-(10) *Fayette County*.—For the county of Fayette,  
2      seven thousand five hundred dollars.

2      Sec. 1-(11) *Gilmer County*.—For the county of Gilmer,  
2      two thousand four hundred dollars.

2      Sec. 1-(12) *Grant County*.—For the county of Grant,  
2      two thousand dollars.

2      Sec. 1-(13) *Greenbrier County*.—For the county of  
2      Greenbrier, three thousand two hundred dollars.

2      Sec. 1-(14) *Hampshire County*.—For the county of  
2      Hampshire, two thousand seven hundred dollars.

2      Sec. 1-(15) *Hancock County*.—For the county of Han-  
2      cock, three thousand eight hundred dollars.

2      Sec. 1-(16) *Hardy County*.—For the county of Hardy,  
2      two thousand dollars.

2      Sec. 1-(17) *Harrison County*.—For the county of Har-  
rison, six thousand dollars.

2      Sec. 1-(18) *Jackson County*.—For the county of Jack-  
son, two thousand dollars.

2      Sec. 1-(19) *Jefferson County*.—For the county of Jeffer-  
son, three thousand two hundred dollars.

2      Sec. 1-(20) *Kanawha County*.—For the county of Ka-  
nawha, seven thousand five hundred dollars.

2      Sec. 1-(21) *Lewis County*.—For the county of Lewis,  
three thousand dollars.

2      Sec. 1-(22) *Logan County*.—For the county of Logan,  
six thousand five hundred dollars.

2      Sec. 1-(23) *Lincoln County*.—For the county of Lincoln,  
three thousand six hundred dollars.

2      Sec. 1-(24) *Marion County*.—For the county of Marion,  
six thousand five hundred dollars.

2      Sec. 1-(25) *Marshall County*.—For the county of Mar-  
shall, three thousand eight hundred dollars.

2      Sec. 1-(26) *Mason County*.—For the county of Mason,  
three thousand dollars.

2      Sec. 1-(27) *Mercer County*.—For the county of Mercer,  
six thousand dollars.

2      Sec. 1-(28) *Mineral County*.—For the county of Min-  
eral, three thousand six hundred dollars.

2      Sec. 1-(29) *Mingo County*.—For the county of Mingo,  
five thousand dollars.

2      Sec. 1-(30) *Monongalia County*.—For the county of  
Monongalia, five thousand dollars.

2      Sec. 1-(31) *Monroe County*.—For the county of Monroe,  
one thousand eight hundred dollars.

2      Sec. 1-(32) *McDowell County*.—For the county of Mc-  
Dowell, seven thousand dollars.

2       Sec. 1-(33) *Morgan County*.—For the county of Morgan,  
3       not less than one thousand five hundred dollars nor more  
      than two thousand dollars, to be fixed by the county court.

2       Sec. 1-(34) *Nicholas County*.—For the county of Nicho-  
      las, three thousand three hundred dollars.

2       Sec. 1-(35) *Ohio County*.—For the county of Ohio, five  
      thousand dollars.

2       Sec. 1-(36) *Pendleton County*.—For the county of Pen-  
      dleton, one thousand six hundred dollars.

2       Sec. 1-(37) *Pleasants County*.—For the county of Pleas-  
      ants, two thousand four hundred dollars.

2       Sec. 1-(38) *Pocahontas County*.—For the county of Po-  
      cahontas, two thousand five hundred dollars.

2       Sec. 1-(39) *Preston County*.—For the county of Preston,  
      three thousand five hundred dollars.

2       Sec. 1-(40) *Putnam County*.—For the county of Putnam,  
      two thousand four hundred dollars.

2       Sec. 1-(41) *Raleigh County*.—For the county of Raleigh,  
      seven thousand dollars.

2       Sec. 1-(42) *Randolph County*.—For the county of Ran-  
      dolph, three thousand six hundred dollars.

2       Sec. 1-(43) *Ritchie County*.—For the county of Ritchie,  
      three thousand dollars.

2       Sec. 1-(44) *Roane County*.—For the county of Roane,  
      two thousand eight hundred dollars.

2       Sec. 1-(45) *Summers County*.—For the county of Sum-  
      mers, three thousand dollars.

2       Sec. 1-(46) *Taylor County*.—For the county of Taylor,  
      three thousand dollars.

2       Sec. 1-(47) *Tucker County*.—For the county of Tucker,  
      two thousand seven hundred dollars.

2       Sec. 1-(48) *Tyler County*.—For the county of Tyler, two  
      thousand seven hundred dollars.

2      Sec. 1-(49) *Upshur County*.—For the county of Upshur,  
2      three thousand dollars.

2      Sec. 1-(50) *Wayne County*.—For the county of Wayne,  
2      four thousand eight hundred dollars.

2      Sec. 1-(51) *Webster County*.—For the county of Web-  
2      ster, three thousand dollars.

2      Sec. 1-(52) *Wetzel County*.—For the county of Wetzel,  
2      three thousand six hundred dollars.

2      Sec. 1-(53) *Wirt County*.—For the county of Wirt, two  
2      thousand five hundred dollars.

2      Sec. 1-(54) *Wood County*.—For the county of Wood,  
2      five thousand dollars.

2      Sec. 1-(55) *Wyoming County*.—For the county of Wy-  
2      oming, five thousand five hundred dollars.

2      Sec. 2. *Salaries of County Clerks*.—The annual compen-  
2      sation of the clerk of the county court of each county shall,  
3      on and after January one, one thousand nine hundred  
4      fifty-one, be in the amounts set forth in sections two-(one)  
5      to two-(fifty-two), inclusive, of this article.

2      Sec. 2-(1) *Barbour County*.—For the county of Barbour,  
2      two thousand two hundred dollars.

2      Sec. 2-(2) *Berkeley County*.—For the county of Berke-  
2      ley, three thousand dollars.

2      Sec. 2-(3) *Boone County*.—For the county of Boone,  
2      three thousand two hundred dollars.

2      Sec. 2-(4) *Braxton County*.—For the county of Braxton,  
2      three thousand dollars.

2      Sec. 2-(5) *Brooke County*.—For the county of Brooke,  
2      three thousand dollars.

2      Sec. 2-(6) *Cabell County*.—For the county of Cabell,  
2      six thousand dollars.

2      Sec. 2-(7) *Calhoun County*.—For the county of Calhoun,  
2      one thousand seven hundred dollars.

2      Sec. 2-(8) *Clay County*.—For the county of Clay, one  
2      thousand nine hundred dollars.

2      Sec. 2-(9) *Doddridge County*.—For the county of Dod-  
2      dridge, two thousand dollars.

2      Sec. 2-(10) *Fayette County*.—For the county of Fayette,  
2      not less than four thousand two hundred dollars nor more  
3      than four thousand eight hundred dollars, to be fixed by  
4      the county court.

2      Sec. 2-(11) *Gilmer County*.—For the county of Gilmer,  
2      two thousand one hundred dollars.

2      Sec. 2-(12) *Greenbrier County*.—For the county of  
2      Greenbrier, three thousand two hundred dollars.

2      Sec. 2-(13) *Hampshire County*.—For the county of  
2      Hampshire, two thousand two hundred dollars.

2      Sec. 2-(14) *Hancock County*.—For the county of Han-  
2      cock, four thousand dollars.

2      Sec. 2-(15) *Harrison County*.—For the county of Har-  
2      rison, five thousand dollars.

2      Sec. 2-(16) *Jackson County*.—For the county of Jack-  
2      son, one thousand eight hundred dollars.

2      Sec. 2-(17) *Jefferson County*.—For the county of Jeffer-  
2      son, two thousand two hundred dollars.

2      Sec. 2-(18) *Kanawha County*.—For the county of Ka-  
2      nawha, seven thousand five hundred dollars.

2      Sec. 2-(19) *Lewis County*.—For the county of Lewis,  
2      two thousand eight hundred dollars.

2      Sec. 2-(20) *Lincoln County*.—For the county of Lincoln,  
2      three thousand six hundred dollars.

2      Sec. 2-(21) *Logan County*.—For the county of Logan,  
2      four thousand five hundred dollars.

2      Sec. 2-(22) *Marion County*.—For the county of Marion,  
2      five thousand two hundred dollars.

2      Sec. 2-(23) *Marshall County*.—For the county of Marshall, three thousand six hundred dollars.

2      Sec. 2-(24) *Mason County*.—For the county of Mason, three thousand dollars.

2      Sec. 2-(25) *McDowell County*.—For the county of McDowell, five thousand dollars.

2      Sec. 2-(26) *Mercer County*.—For the county of Mercer, five thousand dollars.

2      Sec. 2-(27) *Mineral County*.—For the county of Mineral, three thousand six hundred dollars.

2      Sec. 2-(28) *Mingo County*.—For the county of Mingo, four thousand eight hundred dollars.

2      Sec. 2-(29) *Monongalia County*.—For the county of Monongalia, four thousand dollars.

2      Sec. 2-(30) *Monroe County*.—For the county of Monroe, one thousand eight hundred dollars.

2      Sec. 2-(31) *Morgan County*.—For the county of Morgan, one thousand nine hundred dollars.

2      Sec. 2-(32) *Nicholas County*.—For the county of Nicholas, three thousand dollars.

2      Sec. 2-(33) *Ohio County*.—For the county of Ohio, six thousand dollars.

2      Sec. 2-(34) *Pleasants County*.—For the county of Pleasants, two thousand four hundred dollars.

2      Sec. 2-(35) *Pocahontas County*.—For the county of Pocahontas, two thousand four hundred dollars.

2      Sec. 2-(36) *Preston County*.—For the county of Preston, three thousand dollars.

2      Sec. 2-(37) *Putnam County*.—For the county of Putnam, two thousand five hundred dollars.

2      Sec. 2-(38) *Raleigh County*.—For the county of Raleigh, four thousand eight hundred dollars.

Sec. 2-(39) *Randolph County*.—For the county of Randolph, three thousand four hundred dollars.

Sec. 2-(40) *Ritchie County*.—For the county of Ritchie, two thousand five hundred dollars.

Sec. 2-(41) *Roane County*.—For the county of Roane, two thousand six hundred dollars.

Sec. 2-(42) *Summers County*.—For the county of Summers, one thousand eight hundred dollars.

Sec. 2-(43) *Taylor County*.—For the county of Taylor, two thousand four hundred dollars.

Sec. 2-(44) *Tucker County*.—For the county of Tucker, two thousand four hundred dollars.

Sec. 2-(45) *Tyler County*.—For the county of Tyler, two thousand four hundred dollars.

Sec. 2-(46) *Upshur County*.—For the county of Upshur, two thousand eight hundred dollars.

Sec. 2-(47) *Wayne County*.—For the county of Wayne, three thousand three hundred dollars.

Sec. 2-(48) *Webster County*.—For the county of Webster, two thousand six hundred dollars.

Sec. 2-(49) *Wetzel County*.—For the county of Wetzel, two thousand eight hundred dollars.

Sec. 2-(50) *Wirt County*.—For the county of Wirt, one thousand eight hundred dollars.

Sec. 2-(51) *Wood County*.—For the county of Wood, four thousand five hundred dollars.

Sec. 2-(52) *Wyoming County*.—For the county of Wyoming, four thousand two hundred dollars.

Sec. 3. *Salaries of Circuit Clerks*.—The annual compensation of the clerk of the circuit court (or clerk of circuit and criminal or intermediate or other court of limited jurisdiction) in each county shall, on and after January one, one thousand nine hundred fifty-one, be in the



6 amounts set forth in sections three-(one) to three-(fifty-  
7 two), inclusive, of this article.

Sec. 3-(1) *Barbour County*.—For the county of Barbour,  
2 two thousand dollars.

Sec. 3-(2) *Berkeley County*.—For the county of Berke-  
2 ley, two thousand eight hundred dollars.

Sec. 3-(3) *Boone County*.—For the county of Boone,  
2 three thousand dollars.

Sec. 3-(4) *Braxton County*.—For the county of Braxton,  
2 three thousand dollars.

Sec. 3-(5) *Brooke County*.—For the county of Brooke,  
2 three thousand dollars.

Sec. 3-(6) *Cabell County*.—For the county of Cabell,  
2 six thousand dollars.

Sec. 3-(7) *Calhoun County*.—For the county of Calhoun,  
2 one thousand two hundred dollars.

Sec. 3-(8) *Clay County*.—For the county of Clay, one  
2 thousand six hundred dollars.

Sec. 3-(9) *Doddridge County*.—For the county of Dod-  
2 dridge, one thousand nine hundred dollars.

Sec. 3-(10) *Fayette County*.—For the county of Fayette,  
2 not less than four thousand two hundred dollars nor more  
3 than four thousand eight hundred dollars, to be fixed by  
4 the county court.

Sec. 3-(11) *Gilmer County*.—For the county of Gilmer,  
2 one thousand eight hundred dollars.

Sec. 3-(12) *Greenbrier County*.—For the county of  
2 Greenbrier, two thousand five hundred dollars.

Sec. 3-(13) *Hampshire County*.—For the county of  
2 Hampshire, one thousand seven hundred fifty dollars.

Sec. 3-(14) *Hancock County*.—For the county of Han-  
2 cock, three thousand two hundred fifty dollars.

2     Sec. 3-(15) *Harrison County*.—For the county of Harrison, five thousand dollars.

2     Sec. 3-(16) *Jackson County*.—For the county of Jackson, one thousand five hundred dollars.

2     Sec. 3-(17) *Jefferson County*.—For the county of Jefferson, three thousand dollars.

2     Sec. 3-(18) *Kanawha County*.—For the county of Kanawha, seven thousand five hundred dollars.

2     Sec. 3-(19) *Lewis County*.—For the county of Lewis, two thousand five hundred dollars.

2     Sec. 3-(20) *Lincoln County*.—For the county of Lincoln, three thousand dollars.

2     Sec. 3-(21) *Logan County*.—For the county of Logan, four thousand five hundred dollars.

2     Sec. 3-(22) *Marion County*.—For the county of Marion, five thousand two hundred dollars.

2     Sec. 3-(23) *Marshall County*.—For the county of Marshall, three thousand dollars.

2     Sec. 3-(24) *Mason County*.—For the county of Mason, two thousand two hundred dollars.

2     Sec. 3-(25) *McDowell County*.—For the county of McDowell, five thousand dollars.

2     Sec. 3-(26) *Mercer County*.—For the county of Mercer, five thousand dollars.

2     Sec. 3-(27) *Mineral County*.—For the county of Mineral, three thousand six hundred dollars.

2     Sec. 3-(28) *Mingo County*.—For the county of Mingo, four thousand eight hundred dollars.

2     Sec. 3-(29) *Monongalia County*.—For the county of Monongalia, four thousand dollars.

2     Sec. 3-(30) *Monroe County*.—For the county of Monroe, one thousand three hundred twenty dollars.

2      Sec. 3-(31) *Morgan County*.—For the county of Morgan,  
2      one thousand four hundred dollars.

2      Sec. 3-(32) *Nicholas County*.—For the county of Nich-  
2      olas, two thousand five hundred dollars.

2      Sec. 3-(33) *Ohio County*.—For the county of Ohio, five  
2      thousand five hundred dollars.

2      Sec. 3-(34) *Pleasants County*.—For the county of Pleas-  
2      ants, one thousand eight hundred dollars.

2      Sec. 3-(35) *Pocahontas County*.—For the county of Po-  
2      cahontas, two thousand one hundred dollars.

2      Sec. 3-(36) *Preston County*.—For the county of Preston,  
2      two thousand seven hundred dollars.

2      Sec. 3-(37) *Putnam County*.—For the county of Putnam,  
2      two thousand one hundred dollars.

2      Sec. 3-(38) *Raleigh County*.—For the county of Raleigh,  
2      four thousand four hundred dollars.

2      Sec. 3-(39) *Randolph County*.—For the county of Ran-  
2      dolph, three thousand four hundred dollars.

2      Sec. 3-(40) *Ritchie County*.—For the county of Ritchie,  
2      two thousand one hundred dollars.

2      Sec. 3-(41) *Roane County*.—For the county of Roane,  
2      two thousand two hundred dollars.

2      Sec. 3-(42) *Summers County*.—For the county of Sum-  
2      mers, one thousand eight hundred dollars.

2      Sec. 3-(43) *Taylor County*.—For the county of Taylor,  
2      two thousand four hundred dollars.

2      Sec. 3-(44) *Tucker County*.—For the county of Tucker,  
2      two thousand two hundred dollars.

2      Sec. 3-(45) *Tyler County*.—For the county of Tyler, two  
2      thousand two hundred dollars.

2      Sec. 3-(46) *Upshur County*.—For the county of Upshur,  
2      two thousand eight hundred dollars.

2      **Sec. 3-(47) Wayne County.**—For the county of Wayne,  
2      two thousand seven hundred dollars.

2      **Sec. 3-(48) Webster County.**—For the county of Web-  
2      ster, two thousand four hundred dollars.

2      **Sec. 3-(49) Wetzel County.**—For the county of Wetzel,  
2      two thousand four hundred dollars.

2      **Sec. 3-(50) Wirt County.**—For the county of Wirt, one  
2      thousand two hundred dollars.

2      **Sec. 3-(51) Wood County.**—For the county of Wood,  
2      four thousand five hundred dollars.

2      **Sec. 3-(52) Wyoming County.**—For the county of Wy-  
2      oming, four thousand two hundred dollars.

2      **Sec. 4. Salaries of Joint Clerks of County and Circuit**  
2      **Courts.**—The annual compensation of the clerks of the  
3      courts in the counties where both the office of the clerk  
4      of the county court and the clerk of the circuit court are  
5      held by the same person shall be as follows: Hardy county,  
6      two thousand six hundred dollars; Grant county, two  
7      thousand five hundred dollars; Pendleton county, two  
8      thousand four hundred dollars.

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## CHAPTER 30

(Com. Sub. for Senate Bill No. 6—Originating in the Senate Committee on  
the Judiciary)

AN ACT to amend and reenact section six, article seven, chap-  
ter seven of the code of West Virginia, one thousand nine  
hundred thirty-one, as last amended and reenacted by  
chapter forty-seven, acts of the Legislature, regular ses-  
sion, one thousand nine hundred forty-seven, relating to  
assistants and stenographers or clerks for prosecuting at-  
torneys; salaries; and when the court may appoint attorney  
to prosecute.

[Passed March 9, 1949 in effect July 1, 1949. Approved by the Governor.]

## **Article 7. Salaries; Deputies and Assistants and Their Salaries.**

### **Section**

6. Assistants, stenographers and clerks for prosecuting attorney; salaries; when court may appoint attorney to prosecute.

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

That section six, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended and reenacted by chapter forty-seven, acts of the Legislature, regular session, one thousand nine hundred forty-seven, be amended and reenacted to read as follows:

Section 6. *Assistants, Stenographers and Clerks for Prosecuting Attorney; Salaries; When Court May Ap-  
point Attorney to Prosecute.*—Any prosecuting attorney may, with the assent of the county court of his county, entered of record, except as hereinafter provided, appoint one (and Ohio county, three, and Harrison, Kanawha, Fayette, Raleigh, Cabell and McDowell counties, two each) practicing attorney to assist him in the discharge of his official duties for and during his term of office, and such assistant shall take the same oath and may perform the same duties as his principal; and he may be removed from office as such at any time by his principal; and further he may be removed from his office as such assistant by the circuit court of the county in which he is appointed, for any cause for which his principal might be removed. The compensation of such assistant shall be paid by the principal, except in the counties of Barbour, Berkeley, Boone, Brooke, Cabell, Calhoun, Clay, Fayette, Harrison, Hancock, Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mason, McDowell, Mercer, Mineral, Mingo, Monongalia, Nicholas, Ohio, Putnam, Raleigh, Randolph, Summers, Taylor, Upshur, Wayne, Webster, Wetzel, Wood and Wyoming, and in the said counties the county court thereof shall allow annually to such assistants such compensation to be paid out of the county treasury as is deemed reasonable by the court, except that in Hancock county the salary of such assistant shall not be less than one thousand two hundred dollars nor more than one thou-

29 sand eight hundred dollars; in Ohio county for the first  
30 assistant, three thousand six hundred dollars, for the sec-  
31 ond assistant three thousand dollars and for the third as-  
32 sistant two thousand dollars; in Kanawha county for the  
33 first assistant, not less than five thousand nor more than  
34 six thousand dollars, and for the second assistant not less  
35 than five thousand nor more than six thousand dollars; in  
36 Cabell county for the first assistant four thousand dollars,  
37 and for the second assistant three thousand dollars; in  
38 McDowell county, not less than three thousand dollars  
39 nor more than three thousand six hundred dollars for each  
40 assistant; in Marion county, not less than three thousand  
41 six hundred nor more than four thousand two hundred  
42 dollars; in Raleigh county, four thousand two hundred dol-  
43 lars; in Mingo county, not to exceed four thousand dollars;  
44 in Harrison county, not less than one thousand five hun-  
45 dred nor more than four thousand five hundred dollars; in  
46 Mercer county, four thousand two hundred dollars; in  
47 Summers and Wood counties, not less than one thousand  
48 nor more than two thousand dollars; in Logan county, not  
49 less than three thousand dollars nor more than three thou-  
50 sand six hundred dollars; in Fayette county for the first as-  
51 sistant, not less than three thousand six hundred nor more  
52 than four thousand two hundred dollars, and for the sec-  
53 ond assistant not to exceed two thousand eight hundred  
54 dollars; in Boone and Wyoming counties, not less than one  
55 thousand two hundred nor more than two thousand four  
56 hundred dollars; in Barbour county, one thousand dollars;  
57 in Monongalia county, three thousand dollars; in Wayne  
58 county, two thousand five hundred dollars; in Berkeley  
59 and Lincoln counties, not to exceed one thousand eight  
60 hundred dollars; in Lewis, Marshall, Mineral, Nicholas and  
61 Upshur counties, not to exceed twelve hundred dollars,  
62 and in Randolph county not to exceed two thousand four  
63 hundred dollars; in Webster and Wetzel counties, not less  
64 than six hundred nor more than nine hundred dollars; in  
65 Taylor county, not to exceed six hundred dollars; in Put-  
66 nam county, one thousand two hundred dollars; and Cal-  
67 houn county, three hundred dollars. In each case such com-  
68 pensation shall include the compensation provided by law  
69 for such assistant's services as attorney for boards of edu-

70 cation, and other administrative boards and officers of the  
71 county.

72 In any case in which it would, in the opinion of the court,  
73 be improper for the prosecuting attorney and his assistant  
74 (if he has one), to act, or if the prosecuting attorney and  
75 his assistant be unable to act, such court shall appoint some  
76 competent practicing attorney to prosecute such cases; and  
77 upon the performance of the service for which he was ap-  
78 pointed; the court shall certify that fact, with its opinion  
79 of what would be a reasonable allowance to such attorney  
80 for the service rendered, to the county court of the county,  
81 and such sum, when allowed by the county court, shall be  
82 paid out of the county treasury: *Provided*, That nothing in  
83 this section shall be construed to prohibit the employment  
84 by any person of a competent attorney or attorneys to as-  
85 sist in the prosecution of any person or corporation  
86 charged with crime.

87 In each of the counties herein named, except Harrison,  
88 Cabell, Wayne and Fayette and including Greenbrier,  
89 Hampshire, Pocahontas, Putnam, Ritchie and Upshur, the  
90 prosecuting attorney may employ a stenographer for his  
91 office at a salary, payable out of the county treasury, of  
92 not less than nine hundred nor more than two thousand  
93 dollars per annum; except, the annual salary of such ste-  
94 nographer in Barbour, Pocahontas and Taylor counties  
95 shall not exceed one thousand two hundred dollars; in  
96 Calhoun, Putnam and Upshur counties, shall not exceed  
97 nine hundred dollars; in Hampshire and Ritchie counties  
98 shall not be less than one thousand dollars nor more than  
99 twelve hundred dollars; in Berkeley and Lewis counties,  
100 shall not be less than six hundred dollars, nor exceed one  
101 thousand five hundred dollars; in Monongalia county, shall  
102 be two thousand one hundred dollars; in Boone county,  
103 shall be one thousand eight hundred dollars; and in Brax-  
104 ton county, shall be twelve hundred twenty dollars; in  
105 Webster county, shall be nine hundred dollars; in Gilmer  
106 county, shall not exceed nine hundred dollars: *Provided*,  
107 That in each of the last two named counties the prosecut-  
108 ing attorney may not employ a stenographer except with  
109 the consent of the county court entered of record.

110 In the county of Jefferson the prosecuting attorney may

111 employ a stenographer for his office at a salary of not more  
112 than one thousand dollars per annum, payable out of the  
113 county treasury to be fixed by the said prosecuting at-  
114 torney of said county of Jefferson.

115 In the county of Harrison, the prosecuting attorney may  
116 employ two stenographers for his office at a salary for each  
117 stenographer of not less than nine hundred nor more than  
118 two thousand dollars per annum, payable out of the  
119 county treasury.

120 In the county of Cabell the prosecuting attorney may  
121 employ two stenographers for his office, one at a salary of  
122 two thousand four hundred dollars per year and one at  
123 a salary of one thousand two hundred dollars per year,  
124 payable out of the county treasury.

125 In the county of Clay, the prosecuting attorney may em-  
126 ploy a clerk or stenographer for his office at a salary of one  
127 thousand two hundred dollars per annum, payable out of  
128 the county treasury; except, that in lieu of the appoint-  
129 ment of such clerk or stenographer, the prosecuting attor-  
130 ney may employ a practicing attorney of said county as  
131 his assistant at a salary of not less than one thousand nor  
132 more than one thousand five hundred dollars per annum,  
133 payable out of the county treasury.

134 In the counties of Mingo and Preston, the prosecuting at-  
135 torney may employ one stenographer for his office at a  
136 salary not to exceed three thousand six hundred dollars  
137 per annum for the county of Mingo and one thousand  
138 eight hundred dollars per annum for the county of Pres-  
139 ton, payable out of the county treasury.

140 In the county of Jackson, the prosecuting attorney may  
141 employ one stenographer or clerk for his office at a salary  
142 of not to exceed nine hundred dollars per annum, payable  
143 out of the county treasury.

144 In the county of Mercer, the prosecuting attorney may  
145 employ one stenographer or clerk for his office at a salary  
146 of not to exceed the sum of two thousand four hundred  
147 dollars per annum, payable out of the county treasury.

148 In the counties of Hardy and Grant, the prosecuting at-  
149 torney may employ one stenographer or clerk for his of-  
150 fice at a salary not to exceed seven hundred twenty dol-



151 lars per annum, payable out of the county treasury as  
152 salaries of county officials are paid.

153 In the county of Wyoming, the prosecuting attorney may  
154 employ one stenographer at a salary to be fixed by the  
155 county court and payable out of the treasury of said coun-  
156 ty, and in the counties of Mason and Roane the prosecuting  
157 attorney may employ one stenographer at a salary of not  
158 less than eleven hundred dollars nor more than fifteen  
159 hundred dollars per annum, payable out of the treasury of  
160 said county.

161 In the county of Kanawha the prosecuting attorney may  
162 employ one stenographer at a salary not to exceed three  
163 thousand dollars per annum to be fixed by the county  
164 court and payable out of the treasury of said county.

165 In the county of Hancock, the prosecuting attorney may  
166 employ one stenographer at a salary of not more than two  
167 thousand four hundred dollars per annum, payable out of  
168 the treasury of said county.

169 In the county of Wayne, the prosecuting attorney may  
170 employ one stenographer at a salary of not less than twen-  
171 ty-four hundred dollars nor more than twenty-seven hun-  
172 dred dollars per annum, to be fixed by the county court  
173 and payable out of the treasury of the county.

174 In the county of Randolph the prosecuting attorney may  
175 employ one stenographer at a salary of not less than one  
176 thousand five hundred dollars per annum and not more  
177 than two thousand dollars per annum to be fixed by the  
178 county court and payable out of the treasury of said county.

179 In the county of Fayette the prosecuting attorney may  
180 employ one stenographer at a salary of not to exceed  
181 twenty-four hundred dollars per year to be fixed by the  
182 county court and payable out of the treasury of said  
183 county.

184 In the county of McDowell, the prosecuting attorney  
185 may employ one stenographer at a salary of not less than  
186 one thousand five hundred dollars nor more than two  
187 thousand four hundred dollars per year to be fixed by the  
188 county court and payable out of the treasury of such  
189 county.

190 The prosecuting attorney may employ a clerk or a  
191 stenographer for his office in the counties of Tyler,

192 Wetzel and Marshall at an annual salary not to exceed  
193 the following: In the county of Tyler, nine hundred dol-  
194 lars; in the county of Wetzel, eighteen hundred dollars;  
195 in the county of Marshall, eighteen hundred dollars, pay-  
196 able out of the treasury of the respective counties.

197 In the county of Lincoln, the prosecuting attorney may  
198 employ one stenographer or clerk for his office at a sal-  
199 ary of not to exceed the sum of two thousand two hundred  
200 dollars per annum, payable out of the county treasury.

201 In the county of Logan, the prosecuting attorney may  
202 employ one stenographer for his office at a salary of not  
203 to exceed the sum of two thousand seven hundred dol-  
204 lars per annum, payable out of the county treasury.

205 In the county of Marion, the prosecuting attorney may  
206 employ one stenographer at a salary not to exceed two  
207 thousand four hundred dollars per annum, payable out  
208 of the county treasury.

209 In the county of Raleigh, the prosecuting attorney may  
210 employ one stenographer at a salary not to exceed three  
211 thousand dollars per annum, payable out of the county  
212 treasury.

213 In the county of Ohio, the prosecuting attorney may  
214 employ one stenographer for his office at a salary of not  
215 to exceed two thousand four hundred dollars per annum,  
216 payable out of the county treasury.

## CHAPTER 31

(Senate Bill No. 101—By Mr. Love)

AN ACT to amend and reenact section twelve, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the allowance of expenses by county courts to sheriffs and their deputies.

[Passed February 28, 1949; in effect July 1, 1949. Approved by the Governor.]

### Article 7. Salaries; Deputies and Assistants and Their Salaries.

#### Section

12. Allowance for expenses of sheriff.

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

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

Section 12. *Allowance for Expenses of Sheriff.*—The  
2 county court shall allow the actual and necessary ex-  
3 penses incurred or expended by the sheriff in arresting,  
4 pursuing, or transporting persons accused or convicted of  
5 crimes and offenses, including the cost of law enforcement  
6 and safety equipment, and in conveying or transferring  
7 any person to or from any state institution to which he  
8 may be committed from his county, where by law the  
9 sheriff is authorized to convey or transfer such person,  
10 and shall allow the actual and necessary expenses in-  
11 curred or expended in serving summonses, notices, or  
12 other official papers in connection with the sheriff's of-  
13 fice, including an allowance of seven cents per mile for  
14 each mile a sheriff or deputy sheriff is required to drive  
15 his personally owned car in the performance of his duties  
16 hereunder. Every sheriff shall file monthly, under oath,  
17 a full and accurate account of all his actual and necessary  
18 expenses mentioned in this section, supported by verified  
19 accounts for his deputies for amounts expended or in-  
20 curred by each, before payment thereof shall be allowed  
21 by the county court.

## CHAPTER 32

(Senate Bill No. 200—By Mr. Bean)

AN ACT to amend and reenact section four, article seven, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to official court reporters.

[Passed March 12, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 7. Official Reporters.

#### Section

4. Transcript of notes; fee; authenticity; transcript for judge in criminal cases.

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

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

**Section 4. *Transcript of Notes; Fee; Authenticity;***

2 *Transcript for Judge in Criminal Cases.*—The reporter  
3 shall furnish, upon request, to any party to a case, a type-  
4 written transcript of his shorthand notes of the testimony  
5 or other proceedings, and shall certify the same as being  
6 correct, and shall be paid therefor, by the party request-  
7 ing such transcript, at the rate of twenty-four cents for  
8 each one hundred words so transcribed and certified; and  
9 for each carbon copy of such transcript, ordered at the  
10 same time, he shall be paid seven cents for each one hun-  
11 dred words so furnished.

12 A transcript of such testimony or proceedings, when  
13 certified by the official reporter and by the judge of the  
14 court, shall be authentic for all purposes, and shall be used  
15 by the parties to the cause in any further proceedings  
16 therein wherein the use of the same may be required. It  
17 may be used, without further authentication, in making  
18 up the record on appeal, as provided in sections thirty-six  
19 and thirty seven, article six, chapter fifty-six of the code;  
20 and in all cases of appeal such reporter shall also make a  
21 carbon copy of such transcript, which copy shall be filed  
22 in the office of the clerk of the court in which the trial or  
23 proceedings were had, to be used, if necessary, in making  
24 up the record on appeal, and, if so used, the clerk shall not  
25 be entitled to any fee for that part of the record. If, upon  
26 appeal or writ of error, the judgment, decree or order  
27 entered in the cause be reversed, the cost of such tran-  
28 script shall be taxed as other costs; and if such transcript  
29 be requested or required for the purpose of demurring  
30 to the evidence, the cost thereof shall be taxed in favor  
31 of the party prevailing on the demurrer.

32 It shall also be the duty of such reporter in any crim-  
33 inal case, upon the request of the court or the judge there-  
34 of, and for his use, to furnish a transcript of his notes of  
35 the testimony and proceedings without extra charge.

## CHAPTER 33

(House Bill No. 118—By Mr. File)

AN ACT to amend and reenact section two, article eight, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to West Virginia law library and the librarian.

[Passed March 11, 1949; in effect July 1, 1949. Approved by the Governor.]

### Article 8. State Law Libraries.

#### Section

2. Librarian; bond; assistants; compensation.

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

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

#### Section 2. *Librarian; Bond; Assistants; Compensation.*—

- 2 The supreme court of appeals, or the judges thereof in
- 3 vacation, shall appoint a competent librarian to have im-
- 4 mediate custody and charge of the West Virginia law
- 5 library under the direction of the court. Such librarian
- 6 shall give bond in a penalty fixed by the court of not
- 7 less than two nor more than five thousand dollars, with
- 8 surety thereon, to be approved by the court, and condi-
- 9 tioned as provided for official bonds. Such bond shall
- 10 be deposited for safekeeping with the clerk of the court.
- 11 The librarian shall be an officer of the court and shall
- 12 hold his office and be removable at its pleasure. Vacan-
- 13 cies in the office of librarian occurring during a vacation
- 14 of the court may be filled by appointment in writing
- 15 made by the judges of the court, or any three of them.
- 16 When, in the opinion of the court, other employees are
- 17 needed for the proper protection and use of the library,
- 18 it may employ such assistants as may be necessary for
- 19 that purpose. The salary of the librarian shall be four
- 20 thousand two hundred dollars per annum, payable in
- 21 monthly installments, and the expense of such assistants
- 22 shall be fixed by the court and shall be paid upon order
- 23 of the court.

## CHAPTER 34

(House Bill No. 24—By Mr. Ballard, of Monroe, and Mr. File)

AN ACT to amend chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new article nine, relating to the establishment and administration of a permanent retirement system for judges of courts of record of this state.

[Passed March 7, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 9. Retirement System for Judges of Courts of Record.

#### Section

1. Judges' retirement system.
2. Judges' retirement fund.
3. Custody, investment and administration of funds.
4. Percentage contributions from salaries.
5. Election not to contribute.
6. Eligibility for and payment of benefits.
7. Ineligibility to receive benefits.
8. Retirement and eligibility.
9. Determination of eligibility for benefits.
10. Services of retired judges.
11. Monthly payments.
12. Refunds.
13. Disqualification for pay and benefits.
14. Monies exempt from execution.
15. County commissioners excluded.
16. Provisions severable.

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

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

Section 1. *Judges' Retirement System.*—There is hereby  
2 established a judges' retirement system for the purpose  
3 and to be administered as hereinafter provided.

Sec. 2. *Judges' Retirement Fund.*—As a part of the  
2 judges' retirement system, there is hereby created a  
3 judges' retirement fund which shall be made up of and  
4 into which shall be paid  
5 (a) Percentage contributions from salaries of judges  
6 as provided in section four of this article;

7 (b) Gifts and bequests to the fund and any accretions  
8 and accumulations which may properly be paid into and  
9 become a part of the fund;

10 (c) Specific appropriations to the fund made by the  
11 Legislature of the state of West Virginia and by any  
12 county court or courts of the state;

13 (d) Interest on the investment of any part or parts  
14 of the fund;

15 (e) Any other monies, available and not otherwise ex-  
16 pended, which may be appropriated or transferred to the  
17 fund.

### Sec. 3. *Custody, Investment and Administration of Fund.*

2 —The state treasurer shall be the custodian of the fund  
3 and of any investment securities of the retirement sys-  
4 tem and shall give a separate and additional bond for the  
5 faithful performance of his duties as such custodian. The  
6 governor shall fix the amount of said bond which shall  
7 be approved as to sufficiency and form by the attorney  
8 general and shall be filed in the office of the secretary  
9 of state. The premium on said bond shall be paid from  
10 the fund.

11 In a manner and to an extent consonant with sound  
12 administration principles, the board of public works shall  
13 have authority to invest said fund in interest bearing  
14 securities of the United States of America, of the state of  
15 West Virginia and of any political subdivision thereof.

16 The state auditor shall be the fiscal officer responsible  
17 for the records and administration of the fund, including  
18 budgetary matters incident to the authority vested in him  
19 with respect to judicial department appropriations under  
20 article six, section fifty-one of the constitution of West  
21 Virginia.

Sec. 4. *Percentage Contributions from Salaries.*—Every  
2 person who is now serving or shall hereafter serve as a  
3 judge of any court of record of this state shall pay into  
4 the judges' retirement fund six per cent of the salary  
5 received by him either out of the state treasury or from  
6 any county court or courts of this state, or, if his total  
7 salary as such judge be paid in part out of the state

8 treasury and in part by a county court or county courts,  
9 then six per cent of such total salary shall be paid into  
10 the said fund.

11 In drawing warrants for the salary checks of said  
12 judges, the state auditor shall deduct from the amount  
13 of each such salary check six per cent thereof, which  
14 amount so deducted shall be credited by the state treasurer  
15 to said fund. Where the salary, or any part thereof, of a  
16 judge is paid by a county court, such county court shall  
17 deduct from the amount of each such salary check six  
18 per cent of the amount thereof, which amount so deducted  
19 shall be paid by said county court into the state treasury  
20 to the credit of said fund.

Sec. 5. *Election not to Contribute.*—Notwithstanding  
2 any provisions of this article, any judge may in writing  
3 notify the auditor or the county court, as the case may  
4 be, within thirty days after he takes office, or, if he is in  
5 office, on the date this article becomes effective, then  
6 within thirty days from such latter date, that he elects  
7 not to make payments or contributions to the fund, in  
8 which event every judge, so electing, shall not thereafter  
9 at any time be entitled to receive any retirement pay or  
10 benefits under provisions of this article. If such notice  
11 in writing be given, any deductions theretofore made  
12 from the salary of such judge and paid into the fund shall  
13 be refunded, without interest, to him by the auditor  
14 by warrant drawn on the fund.

Sec. 6. *Eligibility for and Payment of Benefits.*—Ex-  
2 cept as otherwise provided in sections five, twelve and  
3 thirteen of this article, any person who is now serving,  
4 or who shall hereafter serve, as a judge of any court of  
5 record of this state and shall have served as such judge  
6 for a period of not less than sixteen full years and shall  
7 have reached the age of sixty-five years, or who has  
8 served as judge of such court or of that court and other  
9 courts of record of the state for a period of sixteen full  
10 years or more (whether continuously or not and whether  
11 said service be entirely before or after this act shall be-  
12 come effective, or partly before and partly after said  
13 date, and whether or not said judge shall be in



14 office on the date he shall be come eligible to benefits  
15 hereunder), shall, upon a determination and certification  
16 of his eligibility as provided in section nine hereof, be  
17 paid from the fund annual retirement benefits, so long  
18 as he shall live, in an amount equal to four per cent of  
19 his annual salary for the last year of his service as such  
20 judge multiplied by the total number of full years he has  
21 served as a judge of any of the courts of record of this  
22 state: *Provided, however,* That said annual retirement  
23 benefits shall in no case exceed the amount of fifty  
24 per cent of the annual salary received by him for  
25 the last year of his service as judge: *Provided further,*  
26 That said retirement benefits shall be paid only after  
27 said judge has resigned as such or, for any reason other  
28 than his impeachment, his service as such has ended:  
29 *And provided further,* That the provisions of this act  
30 shall apply only to those judges who are in office at the  
31 time it becomes effective, and those who shall thereafter  
32 serve as judges of the courts of record of this state.

33 In determining eligibility for the benefits provided by  
34 this section, any portion of the term of office of any  
35 judge of a court of record which shall have elapsed  
36 while such judge was on active duty (including leaves,  
37 furloughs, and time consumed going to his place of duty  
38 and returning to his place of residence after discharge  
39 or release from active duty) in the armed forces of the  
40 United States shall be considered as served: *Provided,*  
41 *however,* That any judge who enters active duty in the  
42 armed forces of the United States during his term of  
43 office and after the effective date of this act, shall during,  
44 or within one year after such military service, pay into  
45 the state treasury all contributions required by section  
46 four of this article, and, by reason of such military service  
47 not deducted from his salary.

2 **Sec. 7. Ineligibility to Receive Benefits.**—A judge who  
3 retires under the provisions and accepts the benefits of  
4 this article shall not, while receiving said benefits, be  
5 permitted to practice law in the courts of this state, or  
6 to hold any public office or trust for which he receives  
compensation. If, after retirement under the provisions

7 of this article and acceptance of its benefits, he shall  
8 enter the practice of law or be elected or appointed to  
9 any public office or trust for which he receives any salary  
10 or other compensation, his benefits under this article  
11 shall be suspended for such time only as he shall be  
12 engaged in the practice of law or shall occupy such office  
13 or trust.

Sec. 8. *Retirement and Eligibility.*—Whenever a judge  
2 of a court of record of this state, who is not disqualified  
3 from participation herein as provided in section five of this  
4 article, who shall have served for twelve full years,  
5 shall become physically or mentally incapacitated to per-  
6 form the duties of his office as judge during the remainder  
7 of his term and shall make a written application to the  
8 governor for his retirement, setting forth the nature  
9 and extent of his disability and tendering his resignation  
10 as such judge upon condition that upon its acceptance  
11 he be retired with pay under the provisions of this  
12 article, the governor shall make such investigation as he  
13 shall deem advisable and, if he shall determine that such  
14 disability exists and that the public service is suffering  
15 and will continue to suffer by reason of such disability,  
16 he shall thereupon accept the resignation and, by written  
17 order filed in the office of the secretary of the state, direct  
18 the retirement of the judge for the unexpired portion of  
19 the term for which such judge was elected or appointed.  
20 The secretary of state shall thereupon file a certified copy  
21 of said order with the state auditor. When so accepted,  
22 said resignation shall create a vacancy in said office of  
23 judge, which shall be filled by appointment or election  
24 as provided by law. The retired judge shall thereupon  
25 be paid annual retirement pay during the remainder of  
26 his unexpired term in an amount equal to the annual  
27 salary he was receiving at the time of his retirement,  
28 which annual retirement pay, so long as it shall be paid  
29 to him, shall be in lieu of any and all retirement benefits  
30 such judge may otherwise have received under the pro-  
31 visions of this article: *Provided, however,* That when  
32 the payment of said retirement pay shall have terminated,  
33 such judge, even though he shall not have arrived at the

34 age of sixty-five years, shall, so long as the disability  
35 determined by the governor continues to exist, be paid  
36 the retirement benefits for which provisions is made in  
37 section six of this article.

Sec. 9. *Determination of Eligibility for Benefits.*—Be-  
2 fore any person shall be entitled to retirement benefits  
3 under the provisions hereof, he shall submit proof of his  
4 eligibility for such benefits to the governor, and if such  
5 judge be then in office, he shall at the same time tender  
6 to the governor his resignation as judge upon condition  
7 that, if such resignation be accepted, he be paid retire-  
8 ment benefits as herein provided. Thereupon the gov-  
9 ernor shall make such investigation as he shall deem  
10 advisable and, if the governor shall determine that such  
11 person is entitled to retirement benefits under the pro-  
12 visions hereof, the governor shall accept the resignation  
13 and certify said facts and the amount of retirement  
14 benefits to be paid to said retired judge by a written  
15 order to be filed in the office of the secretary of state.  
16 The secretary of state shall thereupon file a certified  
17 copy of said order with the state auditor. The resignation  
18 so accepted shall create a vacancy in said office of judge  
19 which shall be filled by appointment or election as  
20 provided by law.

Sec. 10. *Services of Retired Judges.*—Any retired judge  
2 receiving retirement benefits under the provisions hereof  
3 shall serve as special judge of any court of record of  
4 this state, except of the Supreme Court of Appeals, when  
5 such retired judge is selected according to law to serve  
6 as such special judge in any such court of record, without  
7 charge or compensation, per diem or otherwise to him,  
8 but shall be allowed and paid his traveling expenses and  
9 other actual exepnses for lodging and meals in the same  
10 manner and amounts as such expenses of judges are paid  
11 as now or hereafter may be provided for by statute.

Sec. 11. *Monthly Payments.*—The retirement benefits  
2 and retirement pay, as herein provided, shall be paid in  
3 equal monthly installments upon the warrant of the state  
4 auditor drawn on the judges' retirement fund. If at any

5 time monies in said fund are insufficient to meet the  
6 orderly requirements of the retirement system, payments  
7 hereunder shall then be made from funds in the state  
8 treasury appropriated and otherwise available for such  
9 purposes.

Sec. 12. *Refunds.*—Any judge of a court of record of  
2 this state whose services have terminated, otherwise than  
3 by retirement under provisions of this act, shall, upon  
4 his written demand or the written demand of his personal  
5 representative filed with the state auditor, by a proper  
6 warrant of the state auditor drawn on the fund, be re-  
7 funded, without interest, any and all money paid by or  
8 for said judge into the fund. Such repayment shall ter-  
9minate all rights of said judge to participate thereafter  
10 at any time in the benefits and pay of the retirement sys-  
11tem, without prejudice, however, to his right to re-enter  
12 the system after a subsequent appointment or election to  
13 a qualified judgeship, but without credit for any prior  
14 years of service.

Sec. 13. *Disqualification for Pay and Benefits.*—No judge  
2 of a court of record of this state, who has become  
3 physically incapacitated to perform the duties of his  
4 office as judge and who has remained so for one year  
5 without making application for retirement and submitting  
6 his resignation as provided in section eight hereof, shall  
7 be entitled to retirement pay or retirement benefits under  
8 the provisions of any section of this article.

Sec. 14. *Monies Exempt from Execution.*—The monies  
2 in the judges' retirement fund, the right of any judge to  
3 participate in the pay and benefits of the retirement sys-  
4tem and the right of any judge to a refund of payments  
5 or contributions made to the fund shall not be subject to  
6 execution, garnishment, attachment or any other process  
7 whatsoever and shall be unassignable and nontransfer-  
8 able.

Sec. 15. *County Commissioners Excluded.*—Commis-  
2 sioners of county courts, or of any tribunal established  
3 in lieu thereof, are excluded from the retirement pay and  
4 retirement benefits herein provided

2       Sec. 16. *Provisions Severable.*—The provisions of this  
3 article are declared to be severable and if any provision  
4 or provisions hereof shall be held to be unconstitutional,  
5 such holding shall not affect the validity of the remaining  
6 provisions.

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## CHAPTER 35

(Senate Bill No. 117—By Mr. Amos)

AN ACT to amend and reenact section fifteen, article ten, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, relating to pecuniary interest of county and district officers, teachers, and school officials in contracts; offering and giving compensation; and providing penalties therefor.

[Passed March 3, 1949; in effect from passage. Approved by the Governor.]

### Article 10. Crimes Against Public Policy.

#### Section

15. Pecuniary interest of county and district officers, teachers and school officials in contracts; offering or giving compensation; penalties.

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

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

Section 15. *Pecuniary Interest of County and District Officers, Teachers and School Officials in Contracts; Offering or Giving Compensation; Penalties.*—It shall be unlawful for any member of a county court, overseer of the poor, district school officer, secretary of a board of education, supervisor or superintendent, principal or teacher of public schools, or any member of any other county or district board, or for any county or district officer to be or become directly or indirectly, pecuniarily interested in the proceeds of any contract or service, or in furnishing any supplies in the contract for, or the

12 awarding or letting of, which as such member, officer,  
13 secretary, supervisor, superintendent, principal, or teach-  
14 er, he may have any voice, influence or control. Any  
15 person or officer named who shall violate any of the fore-  
16 going provisions of this section shall be guilty of a mis-  
17 demeanor, and, upon conviction thereof, be fined not less  
18 than fifty nor more than five hundred dollars, and may,  
19 in the discretion of the court, be imprisoned for a period  
20 not to exceed one year. In addition to the foregoing pen-  
21 alties, any such officer shall be removed from his office  
22 and the certificate or certificates of any teacher, principal,  
23 supervisor or superintendent who violates the provisions  
24 of this section shall, upon conviction thereof, be revoked  
25 immediately. Any person, firm or corporation that offers  
26 or gives any compensation whatever to any of the officers  
27 or persons hereinbefore named or to any other person  
28 with the intent to secure the influence, support or vote of  
29 such officer or person for any contract, service, award or  
30 other matter as to which any county or school district  
31 shall become the paymaster, shall be guilty of a misde-  
32 meanor, and, upon conviction thereof, be fined not less  
33 than five hundred, nor more than twenty-five hundred  
34 dollars, and, at the discretion of the court, such person or  
35 any member of such firm, or, if it be a corporation, any  
36 agent or officer thereof, so offering or giving such com-  
37 pensation, may, in addition to such fine, be imprisoned  
38 for a period not to exceed one year. The provisions of  
39 this section shall not apply to publications in newspapers  
40 required to be made by law.

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## CHAPTER 36

(Com. Sub. for Senate Bill No. 9—Originating in the Senate Committee on the Judiciary)

AN ACT to amend and reenact section three, article three, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, relating to selection of jury in felony cases; striking jurors; and providing for alternate jurors.

[Passed February 28, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 3. Trial of Criminal Cases.

#### Section

3. Selection of jury in felony cases; striking jurors; alternate jurors.

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

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

Section 3. *Selection of Jury in Felony Cases; Striking Jurors; Alternate Jurors.*—In a case of felony, twenty jurors shall be drawn from those in attendance for the trial of the accused. If a sufficient number of jurors for such panel can not be procured in this way, the court shall order others to be forthwith summoned and selected, until a panel of twenty jurors, free from exception, be completed, from which panel the accused may strike off six jurors and the prosecuting attorney may strike off two jurors. The prosecuting attorney shall first strike off two jurors, and then the accused six. If the accused failed to strike from such panel the number of jurors this section allows him to strike, the number not stricken off by him shall be stricken off by the prosecuting attorney, so as to reduce the panel to twelve, who shall compose the jury for the trial of the case.

Whenever, in the opinion of the court the trial is likely to be a protracted one, the court may direct that not more than four jurors, in addition to the regular jury, be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is

31 entitled to one peremptory challenge in addition to those  
32 otherwise allowed by law if one or two alternate jurors  
33 are to be impanelled, and two peremptory challenges if  
34 three or four alternate jurors are to be impanelled. The  
35 additional peremptory challenges may be used against an  
36 alternate juror only, and the other peremptory challenges  
37 allowed by this section may not be used against an alter-  
38 nate juror.

## CHAPTER 37

(House Bill No. 228—By Mr. Schupbach and Mr. Roach)

AN ACT to amend and reenact section three, article seven, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the execution of sentence of death.

[Passed March 12, 1949; in effect from passage. Approved by the Governor.]

### Article 7. Execution of Sentences; Stays.

#### Section

#### 3. Execution of death sentence.

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

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

Section 3. *Execution of Death Sentence.*—Sentence of  
2 death, except for insurrection or rebellion, shall not be  
3 executed sooner than thirty days after the sentence is  
4 pronounced. The sentence of death shall, in every case,  
5 be executed by electrocution of the convict until he is  
6 dead: *Provided, however,* That as to all capital punish-  
7 ment crimes committed prior to the effective date of this  
8 act, the law with reference to the execution of the death  
9 penalty, in such cases, shall be by the method provided  
10 by law immediately prior to the enactment of this statute.  
11 Such punishment shall be executed within the walls of the



12 West Virginia penitentiary and not elsewhere, and within  
13 an enclosure to be prepared for that purpose, under the  
14 direction of the warden of the penitentiary and the author-  
15 ities in control thereof, which enclosure shall be so con-  
16 structed as to exclude public view; and the warden of the  
17 West Virginia penitentiary, or, in case of his death, absence  
18 or inability to act, a deputy warden, shall be the execution-  
19 er; and for his services in executing such sentence, the said  
20 warden, or deputy warden, shall receive the sum of twen-  
21 ty-five dollars, to be paid out of any fund on hand appro-  
22 priated for the maintenance and support of the West Vir-  
23 ginia penitentiary.

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## CHAPTER 38

(Senate Bill No. 113—By Mr. Sinsel and Mr. Love)

AN ACT to amend and reenact section five, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as heretofore amended, reenacted and added to by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, relating to probation and the appointment and fixing of salaries of court or county probation officers, assistant court or county probation officers and clerical assistants, by judges of courts having authority to place offenders on probation.

[Passed March 12, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 12. Probation and Parole.

#### Section

##### 5. Probation officers.

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

That section five, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as heretofore amended, reenacted and added to by chapter twenty-seven, acts of the Legislature, regular session, one thousand

nine hundred thirty-nine, be amended and reenacted to read as follows:

Section 5. *Probation Officers.*—The judge of any court  
2 actively exercising jurisdiction in criminal cases and  
3 having authority to place offenders on probation is au-  
4 thorized to appoint a court or county probation officer  
5 and a clerical assistant to serve during the pleasure of the  
6 appointing judge, and in addition in counties having a  
7 population of more than one hundred fifty thousand, such  
8 judge is authorized to appoint an assistant court or county  
9 probation officer: *Provided*, That the appointing judge  
10 shall first obtain the approval of the county court or  
11 the county courts in his judicial circuit of the expenses  
12 to be incurred and the salary or salaries to be paid the  
13 court or county probation officer and clerical assistants,  
14 which approval shall be discretionary with said county  
15 court or courts and shall be required before any appoint-  
16 ment made hereunder becomes effective.

17 The appointment of a court or county probation officer,  
18 assistant court or county probation officer and clerical  
19 assistant shall be in writing and entered on the order book  
20 of the court by the judge making such appointment and a  
21 copy of said order of appointment shall be delivered to  
22 the county court of the county in which said court or  
23 county probation officer, assistant court or county proba-  
24 tion officer and clerical assistant shall serve. The said  
25 order of appointment shall state the monthly salary fixed  
26 by said judge, to be paid the court or county probation of-  
27 ficer, assistant court or county probation officer or clerical  
28 assistant so appointed. A court or county probation of-  
29 ficer shall receive for his services a monthly salary of not  
30 less than two hundred nor more than three hundred dol-  
31 lars per month; an assistant court or county probation  
32 officer shall receive for his services a monthly salary of  
33 not less than one hundred seventy-five and not more than  
34 two hundred and fifty dollars per month. A clerical as-  
35 sistant shall receive for his services not to exceed two  
36 hundred dollars per month. The county court shall make  
37 provisions for payment and pay monthly the salary of  
38 the court or county probation officer, assistant court or

39 county probation officer and clerical assistant as desig-  
40 nated in the order of appointment.

41 The county court shall provide adequate office space,  
42 equipment and supplies for the court or county probation  
43 officer, assistant court or county probation officer and  
44 clerical assistant, to be approved by the appointing judge.  
45 The county court shall reimburse a court or county proba-  
46 tion officer and an assistant court or county probation  
47 officer for all expenses actually and necessarily incurred  
48 in line of duty in the field.

49 No judge shall appoint any court or county probation  
50 officer, assistant court or county probation officer or cleri-  
51 cal assistant who is related to him either by consanguinity  
52 or affinity.

53 A judge of a circuit court whose circuit comprises more  
54 than one county, having authority to appoint a court or  
55 county probation officer, may appoint a court or county  
56 probation officer and a clerical assistant in each county of  
57 such circuit, or may appoint the same person as a court  
58 or county probation officer and also the same person as a  
59 clerical assistant in two or more of such counties.

60 When a judge has appointed a court or county probation  
61 officer and a clerical assistant to serve in a judicial circuit  
62 including more than one county, the salary and expenses  
63 of such appointees shall be contributed by each county  
64 sharing in the services of such appointees in the proportion  
65 agreed upon by such counties, if they agree, otherwise  
66 in the proportion of the populations in the counties de-  
67 rived from the last United States census.

68 In lieu of, or in addition to, the court or county proba-  
69 tion officers, assistant court or county probation officers  
70 and clerical assistants provided for in this section, the  
71 judge may avail himself of the services of state probation  
72 and parole officers; and any such services which may be  
73 provided to the court or judge by said state probation and  
74 parole officers, shall be rendered at no additional cost to  
75 any court or judge so using them. The director of pro-  
76 bation and parole may assist any court or county proba-  
77 tion officer, upon request, with information relative to  
78 procedure, printed forms, and technique applicable to  
79 probation methods.

80 Nothing contained in this act shall in any manner alter,  
81 modify, affect or supersede the appointment, tenure or  
82 salary of any probation officer appointed by any court  
83 under any special act of the Legislature heretofore or  
84 hereafter enacted.

## CHAPTER 39

(Senate Bill No. 164—By Mr. McKown)

AN ACT to amend and reenact section nine, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to required courses of instruction in public and other schools in this state.

[Passed March 12, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 2. State Board of Education.

#### Section

9. Required courses of instruction.

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

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

Section 9. *Required Courses of Instruction.*—In all  
2 public, private, parochial and denominational schools lo-  
3 cated within this state there shall be given prior to the  
4 completion of the eighth grade at least one year of in-  
5 struction in the history of the state of West Virginia.  
6 Such schools shall also give regular courses of instruction  
7 in history of the United States, in civics, and in the con-  
8 stitutions of the United States and of the state of West  
9 Virginia, for the purpose of teaching, fostering and per-  
10 petuating the ideals, principles and spirit of Americanism,  
11 and increasing the knowledge of the organization and  
12 machinery of the government of the United States and of  
13 the state of West Virginia. The state board of educa-

tion shall, with the advice of the state superintendent of schools, prescribe the courses of study covering these subjects for the public elementary and grammar schools, public high schools and state normal schools. It shall be the duty of the officials or boards having authority over the respective private, parochial and denominational schools to prescribe courses of study for the schools under their control and supervision similar to those required for the public schools.

The state board of education shall cause to be taught in all of the public schools of this state the subject of scientific temperance, including the nature of alcoholic drinks and narcotics, with special instruction as to their effect upon the human system and upon society in general; and the textbooks on the subjects of health and hygiene, biology and the social sciences, adopted for use in the public schools of the state, shall contain appropriate material for such teaching.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, thereof, shall be fined not exceeding ten dollars for each violation, and each week during which there is a violation shall constitute a separate offense. If the person so convicted occupy a position in connection with the public schools, he shall also automatically be removed from such position, and shall be ineligible for reappointment to that or a similar position for the period of one year.

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## CHAPTER 40

(Com. Sub. for Senate Bill No. 38—Originating in the Senate Committee on Education)

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section to be designated section sixteen, relating to the establishment and operation of state camp and conference center for Future Farmers of America, for Future Homemakers of America, and for other educational groups.

[Passed February 24, 1949; in effect ninety days from passage. Approved by the Governor.]

## **Article 2. State Board of Education.**

### **Section**

16. Establishment and operation state camp and conference center; payment of expense; gifts and donations.

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

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

### *Section 16. Establishment and Operation of a State*

- 2 *Camp and Conference Center; Payment of Expense; Gifts*  
3 *and Donations.*—For the purpose of developing competent  
4 leadership, developing character, training for useful citi-  
5 zenship, fostering patriotism, and of providing and en-  
6 couraging the development of organized recreational ac-  
7 tivities for Future Farmers of America and Future Home-  
8 makers of America members, and other youth and adult  
9 groups, a camp and conference center is hereby established.  
10 The West Virginia board of education is hereby author-  
11 ized to secure a site for such camp and conference center  
12 at some suitable place and provide the necessary build-  
13 ings and equipment therefor.

- 14 Such camp and conference center shall be operated by  
15 the division of vocational education of the West Virginia  
16 board of education. Such camp and conference center  
17 may be rented for educational purposes only and the rent  
18 received therefor shall be deposited in the state treasury  
19 and paid out on requisition of the division of vocational  
20 education of the West Virginia board of education for the  
21 maintenance and operation of such camp and conference  
22 center.

- 23 Any appropriations now or hereafter made by the Leg-  
24 islation to carry out the provisions and purposes of this  
25 section shall be expended through the West Virginia board  
26 of education.

- 27 The West Virginia board of education is hereby author-  
28 ized and empowered to receive and use such gifts and  
29 donations of money, land, buildings, materials, equipment,

30 supplies, and labor, either from public or private sources,  
31 as may be offered unconditionally or under such condi-  
32 tions as in the judgment of the West Virginia board of  
33 education are proper and consistent with the provisions of  
34 this section.

35 All the money received as gifts and donations, by the  
36 West Virginia board of education shall be deposited in  
37 the state treasury to be used by the said board of educa-  
38 tion in establishing and maintaining the aforesaid camp  
39 and conference center. A report of all gifts and donations  
40 offered and accepted, together with the names of the  
41 donors and the amounts contributed by each and all dis-  
42 bursements therefrom shall be submitted annually to the  
43 governor of the state by the West Virginia board of edu-  
44 cation.

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## CHAPTER 41

(Senate Bill No. 51—By Mr. McKown)

AN ACT to amend and reenact section four, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the compensation of county superintendents of schools.

[Passed March 11, 1949; in effect July 1, 1949. Approved by the Governor.]

### **Article 4. County Superintendent of Schools.**

#### **Section**

#### **4. Compensation.**

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

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

Section 4. *Compensation.*—On or before the fifteenth  
2 day of June of the year in which the superintendent is  
3 appointed, the board shall fix the annual salary of the  
4 superintendent for the period of appointment for the

- 5 term beginning on the first day of July following, but in  
6 no case shall the annual salary be less than four thousand  
7 dollars nor more than eight thousand dollars, both ex-  
8 clusive of state aid. The board shall pay the salary from  
9 the general current expense fund of the district.

## CHAPTER 42

(Com. Sub. for Senate Bill No. 75—Originating in the Senate Committee on the Judiciary)

AN ACT to amend and reenact section seven, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, relating to the disposal of school property and oil and gas leases.

[Passed March 12, 1949; in effect from passage. Approved by the Governor.]

### Article 5. District Board of Education.

#### Section

7. Disposal of school property; oil and gas leases.

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

That section seven, article five, 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 7. *Disposal of School Property; Oil and Gas Leases.*—If at any time the board shall ascertain that any building or any land no longer shall be needed for school purposes, the board may sell, dismantle, remove or relocate any such buildings and sell the land on which they are located, at public auction, after proper notice, and on such terms as it orders, to the highest responsible bidder. But in rural communities the grantor of the lands, his heirs or assigns, shall have the right to purchase at the sale, the land, exclusive of the buildings thereon, and the mineral rights, at the same price for which it was originally sold. The board by the same method prescribed for the sale of school buildings and lands, may also lease for oil or gas or other minerals any lands or school sites owned in fee by it. The proceeds of such sales



16 and rentals shall be placed to the credit of such fund or  
17 funds of the district as the board may direct: *Provided*,  
18 That the provisions of this section concerning sale at  
19 public auction shall not apply to boards of education sell-  
20 ing or disposing of its property for a public use to the state  
21 of West Virginia, or its political subdivisions, including  
22 county courts, for an adequate consideration without con-  
23 sidering alone the present commercial or market value of  
24 the property.

## CHAPTER 43

(Senate Bill No. 102—By Mr. McKown)

AN ACT to amend and reenact section sixteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to transfer of pupils; tuition; transportation and maintenance.

[Passed February 23, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 5. District Board of Education.

#### Section

16. Transfer of pupils; tuition; transportation and maintenance.

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

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

Section 16. *Transfer of Pupils; Tuition; Transportation and Maintenance.*—The board may divide its territory into such sub-districts as are necessary to determine the schools the pupils of its district shall attend. But upon the written request of any parent or guardian, or person legally responsible for any pupil, or for reasons affecting the best interests of the schools, the superintendent may transfer pupils from one school to another within the district. Any aggrieved person may appeal the decision of the superintendent to the board, and the decision of the board shall be final.

12 Transfers of pupils from one county to another may be  
13 made by the board of the county in which the pupil de-  
14 siring to be transferred resides; but the transfer shall  
15 be subject to the approval of the board of the county to  
16 which the pupil wishes to be transferred, except such  
17 approval shall not be a condition precedent to the trans-  
18 fer of a pupil resident in a municipality comprised of  
19 parts of two or more counties in this state, or resident  
20 in an independent school district as the same existed  
21 prior to the date the county unit act became effective,  
22 made up of parts of two or more counties and whether  
23 or not within its limits now defined is located a munici-  
24 pality or part thereof, but until otherwise provided by  
25 the board of the unit of his residence, such pupil shall  
26 be considered and treated as transferred, as the case or  
27 the situation may be, with the right unimpaired to at-  
28 tend the school or schools now established and main-  
29 tained (if not discontinued) in such municipality and/or  
30 independent school district. Such transfer by operation  
31 of law shall cease, when: (a) The board of the unit  
32 comprising a part of the municipality or independent  
33 school district, has erected or does establish and main-  
34 tain therein a school or schools of the grade or grades  
35 and standing, respectively, equivalent to the school or  
36 schools in adjoining unit which the pupil coming within  
37 the exceptions above mentioned is given the right to  
38 attend; or (b) in the discretion of the board it can  
39 transport economically the pupils coming within the  
40 exception aforesaid to some school or schools estab-  
41 lished and maintained in the jurisdiction of the unit of  
42 the pupils' residence and elects to so do. The existence  
43 of the fact under (a) aforesaid shall be declared by the  
44 board and entered of record in its minutes, as well as  
45 the entry of the exercise of its discretion and election  
46 under the provisions (b) aforesaid, and a copy of the  
47 minutes of the board relating to its declaration and/or  
48 discretion and election as aforesaid, as the case may be,  
49 duly certified by the signature of the president and the  
50 secretary of said board, shall be furnished forthwith  
51 to the board of the unit comprising the other part of  
52 said municipality or independent school district. In

53 all cases of transfer by the act of the board or by opera-  
54 tion of law, either to elementary schools or to high  
55 schools, the board making the transfer shall pay to the  
56 board to which such transfer is made, reasonable tuition  
57 fees, which for elementary schools shall not exceed twelve  
58 dollars a month, and for junior and senior high schools  
59 shall not exceed fifteen dollars a month. The fee, to be  
60 paid out of the teachers fund, shall not exceed the actual  
61 cost of the instruction. No parent, guardian or person  
62 acting as parent or guardian shall be required to pay for  
63 the transfer or for the tuition of the pupil after the  
64 transfer. The board of the district to which the pupil  
65 has been transferred shall promptly, at the first of each  
66 month, certify to the board of the district from which  
67 the pupil was transferred the correct amount of all  
68 tuition fees due and payable for the next preceding  
69 month. All tuition fees shall be paid within thirty days  
70 of certification, to the district maintaining the school  
71 by the district to which the fees are certified. All tuition  
72 fees shall be paid out of the teachers' fund of the one  
73 district to the teachers' fund of the other.

74 In any district where a high school is maintained, but  
75 topography, impassable roads or other conditions pre-  
76 vent the practicable transportation of any pupils to such  
77 high school, the board may transfer them to a high school  
78 in an adjoining district. In any such case, the board  
79 making the transfer shall pay the cost of the transporta-  
80 tion of such pupils to and from the school to which they  
81 are transferred, and shall also pay the tuition fees as  
82 provided above.

83 In any district where no high school for negro pupils  
84 is maintained the board shall provide for the payment of  
85 tuition fees, not to exceed fifteen dollars a month for  
86 each pupil, necessary to permit the enrollment of all  
87 qualified negro pupils in the nearest available negro  
88 high school, negro vocational high school, or in the high  
89 school department of a negro institution of higher edu-  
90 cation, and shall also pay the cost of the daily trans-  
91 portation of the pupils to such high school. If, however,  
92 the daily transportation of such pupils is impracticable,  
93 necessitating their absence from home overnight, the

94 board shall pay in addition to the tuition fees a maintenance allowance of at least thirty dollars a month to  
95 each such pupil. Daily transportation involving a round  
96 trip of more than fifty miles shall at the election of the  
97 pupil be considered impracticable for the purpose of this  
98 requirement.

100 Transfer of pupils from this state to another shall be  
101 upon such terms as shall be mutually agreed upon by  
102 the board of the transferring district and the authorities  
103 of the school to which the transfer is made, and shall be  
104 based upon the aggregate per capita student cost of the  
105 preceding year, of the school to which the transfer is  
106 made.

107 For the purpose of computing average daily attendance any pupil transferred as provided in this section  
108 shall be counted by the district making the transfer and  
109 not by the district to which he was transferred.  
110

—C—

## CHAPTER 44

(House Bill No. 387—By Mr. Trent)

AN ACT to amend and reenact section twenty, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of county boards of education in respect to the maintenance of school libraries, and to the employment and salaries of librarians.

[Passed March 12, 1949; in effect July 1, 1949. Approved by the Governor.]

### Article 5. District Board of Education.

#### Section

20. School libraries; librarian.

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

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

Section 20. *School Libraries; Librarian.*—The board  
2 may provide libraries for its schools and may purchase  
3 books, bookcases, and other things necessary therefor,  
4 and shall pay the cost of such libraries out of the school  
5 funds of the county. In connection with any such school  
6 library, the board may employ a full-time librarian or  
7 may require one of the teachers at the school to serve  
8 as a part-time librarian. Any such full-time librarian or  
9 any such teacher-librarian, who holds a degree in library  
10 science based upon the successful completion of a full  
11 year of graduate work at an institution qualified and  
12 approved to offer such degree, and who holds a collegiate  
13 elementary, first-class high school, or other certificate of  
14 equal rank, shall be paid the same salary as is prescribed  
15 by law for teachers holding a master's degree.

16 The board shall have authority to employ during the  
17 vacation period a librarian for any school having a library  
18 of one hundred or more volumes, and to pay such librarian  
19 out of the school funds of the county an amount to be  
20 determined by the board. Any librarian so appointed  
21 shall keep the library open at least one day a week, at  
22 which time the patrons and pupils of the school may  
23 draw books from the library under such rules and  
24 regulations for the care and return thereof as the board  
25 may prescribe.

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## CHAPTER 45

(House Bill No. 76—By Mr. Blankenship and Mr. White, of Cabell)

AN ACT to repeal section thirteen-a, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend section thirty-two, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the employment and qualifications of assistant superintendents, directors and supervisors of instruction and other educational activities, agricultural club agents.

[Passed March 12, 1949; in effect ninety days from passage. Approved by the Governor.]

## Article 5. District Board of Education.

### Section

32. Employment and qualifications of assistant superintendents, directors and supervisors of instruction and other educational activities; agricultural club agents.

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

That section thirteen-a, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and that section thirty-two, article five of said chapter, as amended, be amended and reenacted to read as follows:

- Section 32. *Employment and Qualifications of Assistant Superintendents, Directors and Supervisors of Instruction and Other Educational Activities; Agricultural Club Agents.*—The county board of education, upon the recommendation of the county superintendent, may employ an assistant whose term of employment shall be not less than one nor more than four years: *Provided*, That such term shall not extend beyond that of the incumbent county superintendent.
- The board shall not employ more than one assistant for each two hundred teachers or major fraction thereof: *Provided, however*, That in such districts in which assistants are employed and fifty or more negro teachers are employed therein, the board may employ one negro assistant superintendent.
- The board, upon the recommendation of the county superintendent, shall have authority to employ such general and special supervisors or directors of instruction and of such other educational activities as may be deemed necessary.
- The employment of the assistant superintendent shall be on a twelve month basis. The period of employment for all others named herein shall be at the discretion of the board.
- Rules and regulations for qualifications of assistant superintendents, and directors and supervisors of instruc-

tion and of other educational activities shall be fixed by the state board of education: *Provided, however,* That the qualifications required for any assistant superintendent shall in no event be higher than those required for the superintendent: *Provided further,* That such rules do not affect the status of any incumbent nor his right to succeed himself in his assigned position.

The county board of education shall have the authority to reimburse such employees for their necessary traveling expenses upon presentation of a monthly, itemized, sworn statement approved by the county superintendent.

Any person employed under the foregoing provision of this section, provided he holds a valid teacher's certificate, shall be given continuing contract status as a teacher and shall hold such status unless dismissed for statutory reasons.

The board may also cooperate with the extension division of the college of agriculture in employing an agricultural club agent for the organization and direction of boys' and girls' agricultural clubs.

All acts or parts of acts inconsistent with this act are hereby repealed.

## CHAPTER 46

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

AN ACT to amend and reenact section six, article six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to payment of pupils' tuition in high school of another county.

[Passed February 18, 1949; in effect July 1, 1949. Approved by the Governor.]

### Article 6. High Schools.

#### Section

6. Payment of pupils' tuition in high school of another county.

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

That section six, article six, chapter eighteen of the code of

West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

- Section 6. *Payment of Pupils' Tuition in High School of Another County.*—The board of a district maintaining a high school which is not accessible to all the pupils eligible to attend, shall either transport them to a high school within the district or pay their tuition fees in high schools of adjoining counties. The tuition shall not exceed fifteen dollars per month per pupil, or in any case more than the actual cost of instruction. Tuition shall not be paid for more than four years for any pupil.
- The district in which the pupil resides shall pay the tuition fees from its teachers' fund. No payment shall be made, however, except upon the presentment of a certificate indicating the name of the pupil, the amount of the fees, the months of attendance, and signed by the president of the board and the principal of the school charging the tuition.
- The tuition or fee for transferring shall not be charged to the parent, guardian, or person legally responsible for the pupil transferred.
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## CHAPTER 47

(House Bill No. 53—By Mr. Blankenship)

AN ACT to amend and reenact section one, article seven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to teachers' contracts.

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[Passed February 24, 1949; in effect ninety days from passage. Approved by the Governor.]

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### Article 7. Teachers.

#### Section

1. Appointment of teachers; contracts; how terminated; failure of teacher to perform contract or violation thereof; when section effective.

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*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, as amended, be amended and reenacted to read as follows:

Section 1. *Appointment of Teachers; Contracts; How Terminated; Failure of Teacher to Perform Contract or Violation Thereof; When Section Effective.*—The board of education shall, upon appointing teachers pursuant to section four, article five of this chapter, fix their salaries as provided by section two of this article.

Before entering upon their duties, all teachers shall execute a contract with their boards of education, which contract shall state the salary to be paid and shall be in the form prescribed by the state superintendent of schools. Every such contract shall be signed by the teacher and by the president and secretary of the board of education, and when so signed shall be filed, together with the certificate of the teacher, by the secretary of the office of the board.

A teacher's contract, under this section, shall be for a term of not less than one nor more than three years, and if, after three years of such employment, the teacher and the board of education enter into a new contract of employment, it shall be a continuing contract and shall remain in full force and effect except as modified by mutual consent of the school board and the teacher, unless and until terminated with written notice, stating cause or causes, to the teacher, by a majority vote of the full membership of the board before April first of the then current year, or by written resignation of the teacher before that date. Such termination shall take effect at the close of the school year in which the contract is so terminated: *Provided, however,* That the contract may be terminated at any time by mutual consent of the school board and the teacher, and that this section shall not affect the powers of the school board to suspend or dismiss a principal or teacher pursuant to section six of this article: *Provided further,* That a continuing contract in full force and effect during the school year one thousand nine hundred forty-eight and one thousand nine hundred forty-nine shall remain in full force and effect: *And provided further,* That a continuing contract shall

39 not operate to prevent a teacher's dismissal based upon  
40 the lack of need for the teacher's services pursuant to  
41 the provisions of law relating to the allocation of teachers  
42 and pupil-teacher ratios. But in case of such dismissal,  
43 the teachers so dismissed shall be placed upon a preferred  
44 list in the order of their length of service, and the school  
45 board shall give due consideration of such list and order  
46 if and when vacancies or need occur. A superintendent  
47 shall not be deemed a teacher within the meaning of this  
48 paragraph.

49 Any teacher who fails to fulfill his contract with the  
50 board, unless prevented from so doing by personal illness  
51 or other just cause, or unless released from such contract  
52 by the board, or who violates any lawful provision there-  
53 of, shall be disqualified to teach in any other public school  
54 in the state for a period of the next ensuing school year:  
55 *Provided, however,* That marriage of a teacher shall not  
56 be considered a failure to fulfill, or violation of, the con-  
57 tract: *Provided further,* That this section shall not be-  
58 come effective until on or after the first Monday in May,  
59 one thousand nine hundred forty-nine.

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## CHAPTER 48

(Com. Sub. for House Bill No. 146—Originating in the House Committee  
on Education)

AN ACT to amend and reenact sections three, thirteen, four-  
teen, eighteen, twenty-three, twenty-five, twenty-six and  
thirty-four, article seven-a, chapter eighteen of the code  
of West Virginia, one thousand nine hundred thirty-one,  
as last amended, relating to the benefits provided for mem-  
bers of the state teachers' retirement system.

[Passed March 12, 1949; in effect July 1, 1949. Approved by the Governor.]

### Article 7-a. State Teachers' Retirement System.

#### Section

3. Definitions.
13. Membership in system.
14. Contributions by members.

18. Funds created; uses and purposes.
23. Withdrawal and death benefits.
25. Eligibility for retirement allowance.
26. Allowance upon retirement.
34. Loans to members.

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

That sections three, thirteen, fourteen, eighteen, twenty-three, twenty-five, twenty-six and thirty-four, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, be amended and re-enacted to read as follows:

Section 3. *Definitions.* — “Teacher” shall include the following persons, if regularly employed for at least half time service: (a) Any person employed for instructional service in the public schools of West Virginia; (b) principals; (c) public school librarians; (d) county superintendents of schools and assistant county superintendents of schools; (e) any county school attendance director holding a West Virginia teachers’ certificate; (f) the executive secretary of the retirement board; (g) members of the research, extension, administrative or library staffs of the public schools; (h) the state superintendent of schools, heads and assistant heads of the divisions under his supervision, or any other employee thereunder performing services of an educational nature; (i) employees of the state board of education who are performing services of an educational nature; (j) any person employed in a non-teaching capacity by the state board of education, the board of governors of West Virginia University, any county board of education, the state department of education or the teachers retirement board, if such person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principals, and educational administrators in schools under the supervision of the state board of control.

“Members of the administrative staff of the public schools” shall include deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

29 "Members of the extension staff" of the public schools  
30 shall include every agricultural agent, boys' and girls'  
31 club agent, and every member of the agricultural extension  
32 staff whose work is not primarily stenographic, clerical,  
33 or secretarial.

34 "Retirement system" shall mean the state teachers' retirement  
35 system provided for in this article.

36 "Present teacher" shall mean any person who was a  
37 teacher within the seven years beginning July first, one  
38 thousand nine hundred thirty-nine, and whose membership  
39 in the retirement system has been continuous.

40 "New entrant" shall mean a member of the retirement  
41 system who is not a present teacher.

42 "Present member" shall mean a present teacher who is  
43 a member of the retirement system.

44 "Total service" shall mean all service as a teacher or  
45 a member of the retirement system since last becoming  
46 a member and, in addition thereto, his credit for prior  
47 service, if any.

48 "Prior service" shall mean all service as a teacher completed  
49 prior to July first, one thousand nine hundred  
50 forty-one, and all service of a present member who was  
51 employed as a teacher, and did not contribute to retirement  
52 account because he was legally ineligible for membership  
53 during such service.

54 "Average final salary" shall mean the average annual  
55 salary earned as a teacher during the last fifteen years  
56 of prior service, including military service, as provided  
57 herein, or if prior service is less than fifteen years, the  
58 average annual salary for that period. If the records for  
59 determining each annual salary needed cannot reasonably  
60 be established by the retirement board, then the  
61 term shall mean the average annual salary of the teacher  
62 for years for which records are available.

63 "Accumulated contributions" shall mean the sum of all  
64 the amounts deducted from the compensation of a contributor  
65 and credited to his individual account in the teachers  
66 accumulation fund.

67 "Regular interest" shall mean interest at three per cent

68 compounded annually, or a higher earnable rate if ap-  
69 proved by the retirement board.

70 "Refund interest" shall mean the interest on refunds  
71 of the accumulated contributions and deposits payable  
72 to former members or to the beneficiaries of deceased  
73 members, as provided in this article. The rate for refund  
74 interest shall be the average annual rate of interest, cal-  
75 culated to one decimal place, earned on retirement board  
76 investments in effect at the end of the fiscal year for which  
77 the interest is due, according to the sworn statement of  
78 the fund custodian required by section nineteen of this  
79 article.

80 "Employer" shall mean the agency of and within the  
81 state which has employed or employs a member.

82 "Contributor" shall mean a member of the retirement  
83 system who has an account in the teachers' accumulation  
84 fund.

85 "Beneficiary" shall mean the recipient of annuity pay-  
86 ments made under the retirement system.

87 "Refund beneficiary" shall mean the estate of a deceased  
88 contributor, or such person as he shall have nominated  
89 as beneficiary of his contributions by written designation  
90 duly executed and filed with the retirement board.

91 "Earnable compensation" shall mean the full compen-  
92 sation actually received by members for service as teach-  
93 ers whether or not a part of such compensation is received  
94 from other funds, federal or otherwise, than those pro-  
95 vided by the state or its subdivisions. Allowances from  
96 employers for maintenance of members shall be deemed  
97 a part of earnable compensation of such members.

98 "Annuities" shall mean the annual retirement payments  
99 for life granted beneficiaries in accordance with this  
100 article.

101 "Member" shall mean a member of the retirement  
102 system.

103 "Public schools" shall mean all publicly supported  
104 schools, including normal schools, colleges, and universi-  
105 ties in this state.

106 "Deposit" shall mean a voluntary payment to his ac-  
107 count by a member.

108 The masculine gender shall be construed so as to in-  
109 clude the feminine.

110 Age in excess of seventy years shall be deemed to be  
111 seventy years.

Sec. 13. *Membership in System.*—The membership of  
2 the retirement system shall consist of the following:

3 (a) All persons, except new entrants, employed as  
4 teachers at the time they become eligible for membership  
5 who, within a year after becoming eligible, notify the  
6 retirement board in writing of their decision to become  
7 members. Any such persons who fail to notify the board  
8 shall automatically be constituted members one year after  
9 they become eligible, unless the retirement board re-  
10 ceives written notice from them declining membership in  
11 the system.

12 (b) New entrants, whose membership in the system  
13 shall be compulsory upon employment as teachers.

14 The membership of any person in the retirement sys-  
15 tem shall cease:

16 (1) Upon the withdrawal of his accumulated contri-  
17 butions after the cessation of teaching service, or (2) upon  
18 retirement, or (3) at death, or (4) if service amounts to  
19 less than five years in any period of ten consecutive years.  
20 For the purpose of subsection four, however, a deposit  
21 by the member to his individual account in the teachers'  
22 accumulation fund of an amount equalling his last annual  
23 contributions shall be deemed the equivalent of one year  
24 of service: *Provided, however,* That if any person re-  
25 turning from service in the armed forces of the United  
26 States, who immediately prior to or immediately follow-  
27 ing his induction therein withdrew his accumulated con-  
28 tributions and within one year following his discharge  
29 from the armed forces reentered the teaching service,  
30 then upon petition duly certified setting forth the facts  
31 filed by him with the retirement board for reinstatement  
32 of membership in the retirement system and repayment  
33 of the accumulated contributions previously withdrawn  
34 together with interest at six percentum thereon, shall be  
35 reinstated in the retirement system.

36 Any former member of the retirement system who has  
37 withdrawn his accumulated contributions but subsequent-  
38 ly reenters the retirement system shall be permitted to  
39 repay to the retirement fund the amount of the contri-  
40 butions so withdrawn, together with interest at six per  
41 cent per annum, and shall be accorded all the rights to  
42 prior service and experience as he held at the time of  
43 withdrawal of such accumulated contributions.

44 Any person in subsection (a) of this section who elects  
45 to become a member after having declined to accept mem-  
46 bership, shall be permitted to enter the retirement sys-  
47 tem, but shall be accorded only the rights of a new en-  
48 trant, unless he deposits in the reserve fund twenty-five  
49 dollars for each year of his prior service. After making  
50 such a deposit, he shall be deemed a present teacher.

Sec. 14. *Contributions by Members.*—At the end of  
2 each month, every member of the retirement system shall  
3 contribute five per cent of his monthly earnable compen-  
4 sation to his individual account in the teachers' accumula-  
5 tion fund; however, in no case shall such monthly con-  
6 tributions exceed seventeen dollars, nor shall exceed an  
7 annual contribution of one hundred fifty-three dollars.  
8 In the calculation of the contribution, a fraction of a cent  
9 shall be deemed to be a cent. The contributions shall be  
10 deducted from the salaries of the members as hereinafter  
11 prescribed, and every member shall be deemed to have  
12 given his consent to such deductions. No deductions, how-  
13 ever, shall be made from the earnable compensation of  
14 the following: (a) any teacher who retired because of  
15 age or service, and then resumed service as a teacher,  
16 and (b) any member who is seventy years old or older.  
17 Payment by an employer to a member of the sum speci-  
18 fied in the employment contract minus the amount of  
19 the employee's contributions shall be deemed to be a full  
20 discharge of the employer's contractual obligation as to  
21 earnable compensation. Upon request and payment of one  
22 dollar service fee by a contributor, the retirement board  
23 shall send the contributor a statement of his accumulated  
24 contributions.

25 Each contributor shall file with the retirement board  
26 or with the employer to be forwarded to the retirement  
27 board an enrollment form showing the date of birth and  
28 other data needed by the retirement board. Upon notice  
29 from retirement board to employer that contributor has  
30 failed to file such forms as prescribed, the employer shall  
31 withhold salary of contributor until needed form is filed  
32 with the retirement board.

Sec. 18. *Funds Created; Uses and Purposes.*—The funds  
2 created are the teachers' accumulation fund, the employ-  
3 ers' accumulation fund, the benefit fund, the reserve fund,  
4 and the expense fund. Each fund shall constitute a sep-  
5 arate trust.

6 (a) The teachers' accumulation fund shall be the fund  
7 in which the contributions of members shall be accumu-  
8 lated. The accumulated contributions of a member re-  
9 turned to him upon his withdrawal, or paid to his estate  
10 or designated beneficiary in the event of death, shall be  
11 paid from the teachers' accumulation fund. Any accumu-  
12 lated contributions forfeited by failure to claim such con-  
13 tributions shall be transferred from the teachers' accumu-  
14 lation fund to the reserve fund.

15 Any member or any employer is hereby authorized and  
16 shall be permitted to deposit in the teachers' accumulation  
17 fund for the account of any member any amounts in mul-  
18 tiples of fifty dollars.

19 (b) Contributions of employers, equalling annually the  
20 members' contributions, shall be accumulated in the em-  
21 ployers' accumulation fund through state appropriations.  
22 Upon the retirement of a member, the employers' con-  
23 tributions shall be transferred from the employers' accu-  
24 mulation fund to the benefit fund.

25 (c) The benefit fund shall be the fund from which  
26 annuities shall be paid. Upon the retirement of a mem-  
27 ber, his accumulated contributions shall be transferred  
28 from the teachers' accumulation fund to the benefit fund;  
29 the accumulated employers' contribution shall be trans-  
30 ferred from the employers' accumulation fund to the bene-  
31 fit fund; and annually a sum for prior service pension and



32 disability credits, if needed, shall be transferred from the  
33 reserve fund to the benefit fund.

34 (d) The retirement board is hereby authorized to ac-  
35 cept gifts and bequests. Any funds that may come into  
36 possession of the retirement system in this manner or  
37 which may be transferred from the teachers' accumulation  
38 fund by reason of the lack of a claimant or because of a  
39 surplus in any of the funds; or any other moneys the dis-  
40 position of which is not otherwise provided for shall be  
41 credited to the reserve fund. The retirement board shall  
42 allow interest on the contributions in the teachers' accu-  
43 mulation fund. Such interest shall be paid from the re-  
44 serve fund and credited to the teachers' accumulation  
45 fund. Any deficit occurring in any fund which would not  
46 be automatically covered by the payments to that fund  
47 as otherwise provided by this article shall be met by trans-  
48 fers from the reserve fund to such fund. In the reserve  
49 fund shall be accumulated moneys from retirement board  
50 appropriations to pay the accrued liabilities of the system,  
51 caused by the granting of prior service and disability  
52 pensions. Costs associated with board investments such  
53 as premiums, accrued interest, and commissions, shall be  
54 paid from the reserve fund.

55 (e) The expense fund shall be the fund from which  
56 shall be paid the expense incurred in the administration  
57 of the retirement system. The retirement board is here-  
58 with authorized to pay, from the expense fund, member-  
59 ship fees in such voluntary organizations as the National  
60 Council on Teacher Retirement, anything in this code to  
61 the contrary notwithstanding. Interest earned on loans to  
62 members shall be deposited in the expense fund. Interest  
63 on board investments shall be credited first to the ex-  
64 pense fund, but the total amount so credited in any one  
65 fiscal year shall not exceed two per cent of the total in-  
66 terest earned on investments during the previous fiscal  
67 year; remainder of annual interest earnings shall be cred-  
68 ited to the reserve fund.

69 The retirement board is herewith given sole authority  
70 to direct and approve the making of any and all fund

71 transfers as provided herein, anything in this code to the  
72 contrary notwithstanding.

Sec. 23. *Withdrawal and Death Benefits.*—Benefits  
2 upon death or upon withdrawal from service prior to re-  
3 tirement under the provisions of this article shall be as  
4 follows:

5 (a) Four months after a contributor was last paid  
6 for service as a teacher, he shall, on demand, be paid his  
7 accumulated contributions plus refund interest up to but  
8 not including the date of his last contribution, if he is  
9 then no longer under contract, verbal or otherwise, to  
10 serve as a teacher; or

11 (b) If such contributor has completed twenty years  
12 of total service he may elect to receive at retirement age  
13 an annuity which is the actuarial equivalent of his accu-  
14 mulated contributions plus the employer's contributions.

15 (c) Upon the death of a contributor, his accumulated  
16 contributions plus refund interest up to and including  
17 the year of his death shall be paid to his refund benefi-  
18 ciary.

Sec. 25. *Eligibility for Retirement Allowance.*—Any  
2 member who has attained the age of sixty years or who  
3 has had thirty-five years of total service as a teacher in  
4 West Virginia, regardless of age, shall be eligible for an  
5 annuity. No new entrant nor present member shall be  
6 eligible for an annuity, however, if either has less than  
7 five years of service to his credit.

8 Any member who has attained the age of fifty-five years  
9 and who has served thirty years as a teacher in West Vir-  
10 ginia shall be eligible for an annuity, but such a member  
11 who retires before attaining the age of sixty years shall  
12 receive ninety per cent of the prior service allowance  
13 which is otherwise provided by sub-section (c) of section  
14 twenty-six of this article.

15 Any member who attains the age of sixty-five years  
16 shall retire from service as a teacher: *Provided*, That if the  
17 employer shall so request in writing, the retirement board  
18 may permit the employment of each member beyond the  
19 age of sixty-five.

20 The request for any annuity shall be made by the mem-  
21 ber in writing to the retirement board, but in case of re-  
22 tirement for disability, the written request may be made  
23 by either the member or the employer.

24 A member shall be eligible for annuity for disability,  
25 if he satisfies the conditions in both (a) and (b) as fol-  
26 lows:

27 (a) His service as a teacher in West Virginia must  
28 total at least ten years, and service as a teacher must  
29 have been terminated because of disability, which dis-  
30 ability must have caused absence from service for at least  
31 six months before his application for disability annuity  
32 is approved.

33 (b) An examination by a physician or physicians se-  
34 lected by the retirement board must show that the mem-  
35 ber is at the time mentally or physically incapacitated  
36 for service as a teacher, that for such service the disability  
37 is total and likely to be permanent, and that he should  
38 be retired in consequence thereof.

39 Continuance of the disability of the retired teacher shall  
40 be established by medical examination, as prescribed in  
41 the preceding paragraph, annually for five years after re-  
42 tirement, and thereafter at such times as the retirement  
43 board may require. Payment of the disability annuity  
44 provided in this article shall cease immediately, if the  
45 retirement board finds that the disability of the retired  
46 teacher no longer exists, or if the retired teacher refuses  
47 to submit to medical examination as required by this  
48 section.

Sec. 26. *Allowance Upon Retirement.*—Upon establish-  
2 ment of eligibility for a retirement allowance, a member  
3 shall be granted an annuity which shall be the sum of  
4 the following:

5 (a) The actuarial equivalent of the contributions and  
6 deposits of the member in his individual account up to  
7 the time of his retirement, with regular interest.

8 (b) The actuarial equivalent of the contributions of  
9 the employer up to the time of the member's retirement,  
10 which shall equal the sum in subsection (a) of this sec-

11 tion minus deposits with regular interest on such deposits.

12 (c) Where prior service credit has been granted, an  
13 allowance of one and five-tenths per cent of the member's  
14 average final salary multiplied by the number of years of  
15 prior service credited to him.

16 (d) The actuarial equivalent of the amounts that  
17 would have accumulated under subsections (a) and (b)  
18 of this section, if the member had contributed to his in-  
19 dividual account until he was fifty years old, at the an-  
20 nual rate of his past actual contributions, but this sub-  
21 section shall apply only as additional income to members  
22 who qualify for disability retirement before they are fifty  
23 years old.

24 The disability annuities of all teachers retired for dis-  
25 ability shall be based upon a disability table prepared by  
26 a competent actuary, approved by the retirement board.

27 For the purposes of subsection (c):

28 (1) An allowance for prior service shall in no case  
29 exceed three-fifths of the member's average final salary.

30 (a) Average final salary shall in no instance be deemed  
31 to exceed the sum of two thousand five hundred dollars,  
32 or to be less than twelve hundred dollars.

33 All annuities shall be paid in twelve monthly payments.  
34 In computing such monthly payments, fractions of a cent  
35 shall be deemed a cent. Such monthly payments shall  
36 cease with the payment for the month within which the  
37 beneficiary dies, and shall begin with the payment for  
38 the month succeeding the month within which the annu-  
39 itant became eligible under this article for the annuity  
40 granted; in no case, however, shall an annuitant, qualify-  
41 ing for an annuity because of age or service, receive more  
42 than four monthly payments which are retroactive after  
43 the board receives application for annuity.

44 In case the retirement board receives data affecting the  
45 approved annuity of a retired teacher, the annuity shall  
46 be changed in accordance with such data, the change  
47 being effective with the payment for the month within  
48 which the board received the new data.

49 An annuity application shall be cancelled immediately,

50 if the applicant dies before the retirement board approves  
51 such application.

52 The provisions of this section shall apply to the com-  
53 putation of all monthly allowances paid to beneficiaries  
54 after the effective date hereof.

Sec. 34. *Loans to Members.*—A member of the retire-  
2 ment system upon written application may borrow from  
3 his individual account in the teachers' accumulation fund,  
4 subject to these restrictions:

5 (1) Loans shall be made in multiples of ten dollars,  
6 the minimal loan being forty dollars and the maximum  
7 being five hundred dollars.

8 (2) Loans to any one member shall not exceed one-  
9 half of his contributions to his individual account in the  
10 teachers' accumulation fund.

11 (3) Interest charged on the amount of the loan shall  
12 be six per cent per annum, and minimal interest charge  
13 shall be for six months.

14 (4) No member shall be eligible for more than one  
15 loan in any one year, except in cases of accidents, illness  
16 requiring medical or hospital care for himself or a member  
17 of his immediate family.

18 (5) If a refund or benefit is payable to the borrower  
19 or his beneficiary before he repays the loan with interest,  
20 the balance due with interest to date shall be deducted  
21 from such benefit or refund.

22 (6) From his monthly salary as a teacher the member  
23 shall pay the loan and interest by deductions which will  
24 pay the loan and interest in not more than sixteen nor  
25 less than six months. Upon notice of loan granted and  
26 payment due, the employer shall be responsible for mak-  
27 ing such salary deductions and reporting them to the  
28 retirement board. At the option of the retirement board,  
29 loan deductions may be collected as prescribed herein for  
30 the collection of members' contribution, or may be col-  
31 lected through issuance of warrant by employer. If the  
32 borrower decides to make loan payments while not paid  
33 for service as a teacher, the retirement board must accept  
34 such payments.

## CHAPTER 49

(Senate Bill No. 267—By Mr. McKown)

AN ACT to amend and reenact section three, article nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one as amended, relating to collection and disbursement of school money by sheriff, the signing of orders for the payment of money issued by the boards of education, providing a penalty for the forgery of signatures to orders for the payment of money, and continuing certain high schools.

[Passed March 12, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 9. School Finance.

#### Section

3. Collection and disbursement of school money by sheriff; signing of orders for payment of money issued by boards of education; forgery of signatures; penalty; continuance of certain high schools.

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

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

Section 3. *Collection and Disbursement of School Money by Sheriff; Signing of Orders for Payment of Money Issued by Boards of Education; Forgery of Signatures; Penalty; Continuance of Certain High Schools.*—The sheriff shall receive, collect and disburse all levies and other school money for the district. He shall keep accounts of the money belonging to the several funds and shall credit and charge every amount to the fund to which it belongs. The sheriff shall pay money only upon the order of the board. The order shall specify the amount to be paid, the purpose for which it is paid, and the fund to which it shall be charged. The order shall be signed by the president and shall be countersigned by the secretary: *Provided, however,* That in counties having a population in excess of thirty thousand as shown by the last

16 preceding federal census, such signatures and the signa-  
17 ture of the sheriff authorizing the payment of such or-  
18 ders by a county depository may be made by means of  
19 such mechanical or electrical device as the board may  
20 select. Such mechanical or electrical device for the mak-  
21 ing of the signatures of the president and secretary shall  
22 be safely kept in the office of the secretary of the board  
23 so that no one shall have access thereto except the pres-  
24 ident and secretary of the board and such of their respec-  
25 tive employees as may be authorized to have access there-  
26 to. Such mechanical or electrical device for the making  
27 of the signature of the sheriff shall be safely kept in the  
28 office of the sheriff so that no one shall have access thereto  
29 except the sheriff and such of his deputies as may be au-  
30 thorized to have access thereto. If any person shall sign  
31 the names of the president or secretary of the board of  
32 education, without having authority so to do, by the use  
33 of any mechanical or electrical device, or otherwise, or  
34 use the facsimile of the signature of either of them on  
35 any order, he shall be guilty of forgery; and if any person  
36 shall utter or attempt to employ as true such forged order,  
37 knowing the same to be forged, he shall, in either event,  
38 be guilty of a felony and, upon conviction, shall be con-  
39 fined in the penitentiary not less than two nor more than  
40 ten years.

41 Any high school which has been established and main-  
42 tained for teacher training and other educational pur-  
43 poses by any board or boards of education in connection  
44 with state institutions of higher learning, shall be con-  
45 tinued and maintained in the manner provided by the act  
46 authorizing such school; except, that the advisory au-  
47 thority formerly vested in the district board or boards of  
48 education is hereby transferred to the county board of  
49 education; and the levy for the support of such school,  
50 formerly laid by the district board or boards of education,  
51 shall be laid on all the assessed property of the county,  
52 by the county board of education. All expenditures from  
53 such fund shall be paid on requisition issued by the  
54 county board.

## CHAPTER 50

(Com. Sub. for House Bill No. 353—Originating in the House Committee on Finance)

AN ACT to amend and reenact sections two, three, six, seven, eight, thirteen and fourteen, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend such article by adding thereto a new section to be designated section fifteen, relating to state aid for schools.

[Passed March 12, 1949; in effect July 1, 1949. Approved by the Governor.]

### Article 9-a. State Aid for Schools.

#### Section

2. Definitions.
3. The foundation school program.
6. Computation of local share of revenue.
7. Total of foundation program.
8. Allocation of state aid.
13. Revenue deficiencies.
14. Excess appropriations.
15. Marginal aid.

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

That sections two, three, six, seven, eight, thirteen and fourteen, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that such article be amended by adding thereto a new section to be designated section fifteen, to read as follows:

- Section 2. *Definitions.*—For the purpose of this article:
- 2 "State board of school finance", "state board", or
  - 3 "board" means the state board of school finance except
  - 4 where the context refers to county boards of education.
  - 5 "County board" means a county board of education.
  - 6 "Teacher" shall include principal.
  - 7 "Teachers employed" means the number of teachers em-
  - 8 ployed at the end of the fourth month of the school term.
  - 9 "Average teacher salary" for any county means the
  - 10 sum of the basic salaries and the increments for experi-
  - 11 ence for all teachers employed therein, divided by the



12 total number of said teachers. Basic salaries and incre-  
13 ments for experience shall be those designated by the  
14 laws of West Virginia.

15 "Enrolled pupil" means any person of school age who  
16 has entered into the work of a public school as a pupil  
17 and who has been listed as such on the record thereof.

18 "Net enrollment" means the number of pupils enrolled  
19 in grades one to twelve, inclusive, of the public schools  
20 of the county for the first four months of the school term:  
21 *Provided*, That no pupil shall be counted more than once  
22 by reason of transfer within the county or from another  
23 county within the state: *And provided further*, That no  
24 pupil shall be counted whose tuition is paid by or from  
25 another state.

26 "Weighted net enrollment" means the total net enroll-  
27 ment, plus one-third of the high school net enrollment.

28 "High school net enrollment" means those pupils en-  
29 rolled in a school consisting only of grades above the sixth,  
30 organized for instruction by departments, and those  
31 pupils in a school in which the seventh and eighth grades  
32 are organized for instruction by departments, having four  
33 or more teachers in these grades.

34 "High school factor" means the weighted net enroll-  
35 ment divided by the net enrollment, carried to five deci-  
36 mal places.

37 "Sparsity factor" shall be a number derived as follows:

38 The number five divided by the sum of (1) the weight-  
39 net enrollment divided by the total miles of designated  
40 roads in the county, and (2) the weighted net enrollment  
41 divided by the number of square miles of area in the  
42 county.

43 "Miles of designated roads" shall mean miles of pri-  
44 mary and secondary roads and highways in any county  
45 designated as such by the state road commission.

46 "Square miles of area" means the area of a county to  
47 be taken from the latest figures furnished by the West  
48 Virginia geological survey.

49 "Levies for general current expense purposes", for the  
50 purpose of this article, shall mean nineteen and six-tenths  
51 cents on class one property; thirty-nine and two-tenths

52 cents on class two property; seventy-eight and four-tenths  
53 cents on classes three and four property.

54 "Index" means and is a percentage figure representing  
55 average ability of a county to contribute to the founda-  
56 tion program. It is to be compounded as follows:

57 First: Determine the ratio of the economic factors,  
58 mentioned in section five of this article, in each county  
59 to the total for each such respective factor for the entire  
60 state of West Virginia. For purposes of computing "index"  
61 the ratio of said economic factors shall be averaged and  
62 the average under this paragraph "first" shall be counted  
63 as one-third.

64 Second: A ratio consisting of the total taxes computed  
65 by using the levies for general current expense purposes  
66 in such county for the preceding assessment year from  
67 non-public utilities property divided by the total taxes  
68 computed by using the levies for general current expense  
69 purposes as aforesaid for all counties of the state for such  
70 year, said ratio under this paragraph "second" shall be  
71 counted as one-third.

72 Third: A ratio consisting of the total taxes computed  
73 by using the levies for general current expense purposes  
74 in such county for the preceding assessment year from  
75 public utilities property divided by the total taxes com-  
76 puted by using the levies for general current expense pur-  
77 poses as aforesaid for all counties of the state for such  
78 year, said ratio under this paragraph "third" shall be  
79 counted as one-third.

80 The ratio under paragraph first, second and third, shall  
81 be reduced to percentage and the average of the respective  
82 percentages shall constitute the "index".

Sec. 3. *The Foundation School Program.*—The founda-  
2 tion school program is hereby established as the basic  
3 essential of free public education in this state for the  
4 purpose of computing the amount of money necessary to  
5 operate the public school system in each county. So far  
6 as funds available from state sources will permit, each  
7 county shall receive a sum which, together with the  
8 amount of "local share of revenue" will pay the cost of

9 the foundation school program as computed in accordance  
10 with this article.

Sec. 6. *Computation of Local Share of Revenue.*—For  
2 the fiscal years one thousand nine hundred forty-nine—  
3 one thousand nine hundred fifty and one thousand nine  
4 hundred fifty—one thousand nine hundred fifty-one, the  
5 state board shall compute the taxes, by using the levies  
6 for general current expense purposes, in all counties for  
7 the preceding year, and total the same. Ninety-five per  
8 cent of the total amount of aforesaid levies for the entire  
9 state, shall be multiplied by the “index” for each respec-  
10 tive county. The result of such multiplication shall as to  
11 the respective counties, constitute their “local share of  
12 revenue” for said fiscal year.

13 Commencing with the first day of July, one thousand  
14 nine hundred forty-nine, the tax commissioner shall con-  
15 tinue making such surveys, examinations, audits and in-  
16 vestigations of the value of the several classes of property  
17 in each county which should be listed and taxed under  
18 the several tax classifications provided by law and de-  
19 termine the true and actual value thereof. In making  
20 such surveys he may use such methods of checking prop-  
21 erty values and determining the amount of property in  
22 each classification, as accepted survey and investigation  
23 procedures of like nature employed for the purpose of  
24 ascertaining the true and actual value of all such property  
25 in each such county. The commissioner may employ such  
26 assistance as appropriations mentioned will permit, and  
27 shall be allowed not to exceed one hundred thousand dol-  
28 lars in each fiscal year of the biennium beginning on the  
29 first day of July, one thousand nine hundred forty-nine,  
30 for the purpose, and his expenses shall be charged as an  
31 item of operational expense to money appropriated and  
32 available for state aid.

33 On or before the first day of October, one thousand  
34 nine hundred fifty, the commissioner shall conclude the  
35 survey and render to the state board of school finance  
36 a report of his conclusions with respect to the true and  
37 actual value of the several classes of taxable property in  
38 each county of the state based upon said surveys and

39 investigations. For the purpose of state aid the values  
40 set forth in said report shall be the true and actual value  
41 of the various classes of property in each such county for  
42 the fiscal year one thousand nine hundred fifty-one—one  
43 thousand nine hundred fifty-two. Thereafter the tax com-  
44 missioner shall annually continue such work of survey,  
45 examination, audit and investigation and annually revise  
46 his reports to the state board of the true and actual value  
47 of the several classes of taxable property in any county  
48 from time to time as such subsequent investigation may  
49 warrant, the same to be made not later than the first day  
50 of October of each year, as to all or any counties of the  
51 state which have been resurveyed prior to said date.

52 The tax commissioner shall, at least once every four  
53 years, redetermine the true and actual value of property  
54 in each county of the state. For the fiscal year one thou-  
55 sand nine hundred fifty-one—one thousand nine hundred  
56 fifty-two, and thereafter, the commissioner shall be al-  
57 lowed annually not to exceed fifty thousand dollars in  
58 any fiscal year for the purposes hereof, and his expenses  
59 shall be charged to money appropriated and available for  
60 state aid in the same manner as funds appropriated herein  
61 for the original survey.

62 From the latest revised report of true and actual value  
63 which is in its hands the state board shall for each county  
64 compute by the application of the "levies for general cur-  
65 rent expense purposes", the amount of revenue which  
66 said levies would produce, if levied upon one hundred  
67 per cent of the true and actual value of each of the several  
68 classes of property contained in the latest report or re-  
69 vised report of such value, made to it by the tax com-  
70 missioner. It shall deduct from such estimated revenue  
71 five per cent as an allowance for the usual losses in col-  
72 lection, due to discounts, exonerations, delinquencies, and  
73 the like. One-half of the remainder shall constitute the  
74 "local share of revenue". The local share of revenue  
75 computed from the true and actual value shall apply to  
76 all fiscal years after the thirtieth of June, one thousand  
77 nine hundred fifty-one: *Provided, however,* That it is de-  
78 termined by the state board that the application of this

79 formula for determining the local share of revenue for  
80 each county will constitute a serious curtailment to the  
81 current school program then the state board shall have  
82 authority, within its discretion, to change the equaliza-  
83 tion factor of one-half or forego altogether the change  
84 from the present formula for distribution until such time  
85 as the matter has been acted upon by the Legislature:  
86 *And provided further*, That any findings resulting from  
87 the survey provided for in this section shall not be used  
88 for any other official purpose than as a base of allocation  
89 for state aid for schools: *And provided further*, That no  
90 assessor shall be required to raise any assessment as a  
91 result of the findings made by the commissioner pursuant  
92 to this section.

Sec. 7. *Total of Foundation Program.*—The state board  
2 shall commence and cause to be determined, as soon after  
3 the first day of July in each fiscal year as is possible, the  
4 foundation program for each county for such year as  
5 follows:

6 Step A—The average teacher's salary for the preceding  
7 fiscal year for each county shall be divided by thirty-three  
8 and one-third and the quotient obtained.

9 Step B—The quotient resolved from step A shall be  
10 multiplied by the "high school factor" mentioned in sec-  
11 tion two of this article and the product obtained.

12 Step C—The product resulting from step B shall be  
13 multiplied by a number composed of the whole number  
14 one plus the "sparsity factor" mentioned in section two  
15 of this article and the product obtained.

16 Step D—The product resulting from step C shall be  
17 divided by seventy-one hundredths and the quotient ob-  
18 tained. This quotient, for the purposes of this article, shall  
19 be the total per pupil cost of the foundation program for  
20 such county.

21 Step E—The quotient resulting from step D shall be  
22 multiplied by the "net enrollment" as the same is defined  
23 in section two of this article and the product obtained.  
24 This product shall be the foundation program for such  
25 county.

Sec. 8. *Allocation of State Aid.*—Following computation of the foundation program for each county the state board shall compute and allocate state aid for each county as follows:

The amount of state aid for each county shall be the foundation program of such county minus the local share of revenue: *Provided, however,* That for the fiscal years one thousand nine hundred forty-nine—one thousand nine hundred fifty and one thousand nine hundred fifty—one thousand nine hundred fifty-one, if the amount of state aid computed above is less than the product of twenty-two hundred multiplied by the number of teachers approved for such county by the state board on July tenth, one thousand nine hundred forty-six, the amount of state aid shall be computed and shall be as hereinafter computed, to-wit:

(1) Sixty-five per cent of its foundation program, or

(2) The product of twenty-two hundred multiplied by the number of teachers approved for such county by the state board, July tenth, one thousand nine hundred forty-six, whichever is greater: *Provided further,* That at this point in the computation, the state aid, if less than one hundred dollars per pupil in its foundation program, shall be computed to give an amount sufficient to raise the foundation program for any county to one hundred dollars per pupil: *And provided further,* That any county at this point in the calculation, which has less than one hundred ten dollars per pupil in the foundation program as computed as aforesaid shall receive an additional amount of two dollars and forty cents per pupil in net enrollment in its adjusted foundation program.

Sec. 13. *Revenue Deficiencies.*—If at any time deficiencies in the revenue reduce amounts available for state aid below the amount of appropriations made by the Legislature for any fiscal year, or if the amount appropriated by the Legislature for any fiscal years is insufficient to meet in full the requirements for that year of the distribution formula prescribed in this article, and it becomes necessary for the state board to reduce the

9 amount of state aid it shall make reductions for each  
10 county as follows:

11 (1) Fifty per cent of the total reductions shall apply  
12 proportionately to the adjustment made for each county  
13 adjusted, and

14 (2) The remaining fifty per cent of the deficiencies shall  
15 be applied as a uniform percentage reduction of the foun-  
16 dation program for each county.

Sec. 14. *Excess Appropriations.*—In any case where ap-  
2 propriations for state aid, exclusive of federal aid, are in  
2 excess of the foundation program required for all counties  
3 of the state, such excess, if available for expenditure un-  
4 der appropriations shall be allocated and paid to the re-  
5 spective county boards of education in the same propor-  
6 tion which the foundation program of each county bears  
7 to the sum of the foundation programs of all counties of  
8 the state. Allocation shall be made by the state board.

Sec. 15. *Marginal Aid.*—There shall be established a  
2 marginal aid fund in the amount of one hundred thousand  
3 dollars for each year of the biennium and, upon request  
4 of the governor, shall be transferred to the general school  
5 fund to provide equalization aid for distribution to mar-  
6 ginal counties by the state board of school finance in  
7 addition to the state aid allocated in accordance with the  
8 provisions of this article: *Provided, however,* That the  
9 state board of school finance shall determine the amount  
10 of additional aid required to complete a nine months term  
11 of school in such counties and distribute such part thereof  
12 as the said fund will permit.

—o—

## CHAPTER 51

(Com. Sub. for House Bill No. 282—Originating in the House Committee on Education)

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article

nine-c, relating to state aid for the repair and construction of public school buildings and prescribing penalties for violations of the provisions hereof.

[Passed March 12, 1949; in effect June 1, 1949. Approved by the Governor.]

### **Article 9-c. State Aid for Repair and Construction of Public School Buildings.**

#### **Section**

1. Allocation to county boards of education.
2. Eligibility for such aid; payment to county boards.
3. Authority to deposit with sinking fund commission.
4. Conditions concerning expenditures; separate accounts and reports; approval of plans and specifications.
5. Penalties for failure to comply with such conditions.

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

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

#### **Section 1. Allocation to County Boards of Education.—**

Any funds appropriated by the Legislature for state aid for the repair, renovation or construction of public school buildings, or for the purchase or preparation of building sites, shall be allocated by the board of school finance to the various county boards of education as follows:

(a) Within thirty days preceding the first day of the biennium for which any such appropriation is made, the board of school finance shall allocate to each county board of education one-half of one per cent of the total amount appropriated for the biennium, and the amount so determined shall be available for payment to the county board of education during either year of the biennium.

(b) The board of school finance shall apportion the remainder of such appropriation among the various county boards of education on the basis of the ratio of the net enrollment of each county for the fourth month of the preceding school year to the total net enrollment in the state for the same month. One-half of the amount so apportioned to each county board shall be available for payment to it during each year of the biennium, if the



22 board is otherwise eligible therefor as hereinafter pro-  
23 vided. If any county board is ineligible to receive the  
24 amount allocated to it for the first year of the biennium,  
25 such amount shall be available for payment to it during  
26 the second year of the biennium, if the board of school  
27 finance is satisfied that the county board is and will  
28 remain eligible therefor for a period of at least two years.

29 Upon application of a county board setting forth sound  
30 reasons therefor, the board of school finance may, during  
31 the first year of the biennium, authorize the release and  
32 payment to the county board of the whole amount allo-  
33 cated to it for the biennium, if satisfied that the county  
34 board will be eligible therefor during each year of the  
35 biennium.

Sec. 2. *Eligibility for Such Aid; Payment to County*  
2 *Boards.*—A county board of education shall not be eligible  
3 for the state aid that may under the provisions of sub-  
4 section one-b be available for payment to it in either year  
5 of the biennium, unless in that year it shall levy the  
6 maximum rates provided by law for general current ex-  
7 pense, for the permanent improvement fund, and for all  
8 necessary debt service, and in addition thereto shall have  
9 available for expenditure for school purposes during the  
10 year, either from a special levy, or from private endow-  
11 ments and gifts, or from the sale of bonds prior to the  
12 effective date of this act, or from funds deposited with the  
13 sinking fund commission to the credit of its permanent  
14 improvement fund prior to the effective date of this act,  
15 or from any combination of the four, an amount equal to  
16 the amount that would be realized in that year from an  
17 additional levy of not less than ten cents on class I prop-  
18 erty, twenty cents on class II property, and forty cents  
19 on classes III and IV property: *Provided, however,* That  
20 if any county board of education has available from the  
21 sources specified in this paragraph a sum less than would  
22 be required to qualify it for the full amount allocated  
23 to it under subsection (b) of section one, it shall be eligible  
24 to receive a proportionate share of the amount so allocated  
25 based upon the ratio of the sum in hand to the amount  
26 which would be required for full participation: *Provided*

27 *further*, That notwithstanding any other requirement of  
28 this paragraph, the county board of education of any  
29 county in which the total assessed valuations fixed by  
30 the county assessor shall, after the passage of this act,  
31 be increased as much as twenty per cent above the total  
32 of such assessed valuations for the year one thousand nine  
33 hundred forty-eight, shall be eligible for the full amount  
34 allocated to it under subsection (b) of section one: *And*  
35 *provided further*, That notwithstanding any other re-  
36 quirement of this paragraph, the county board of educa-  
37 tion of any county in which the total assessed valuations  
38 fixed by the county assessor shall have been increased  
39 as much as fifty per cent between the years one thousand  
40 nine hundred forty and one thousand nine hundred fifty-  
41 one shall be eligible for the full amount allocated to it  
42 under subsection (b) of section one of this article.

43 If the board of school finance is satisfied that a county  
44 board of education is or will be eligible therefor under  
45 the provisions of this section, the board of school finance,  
46 as soon after the first day of July of each year as may be  
47 practicable, shall issue its requisition, in the manner pre-  
48 scribed by law, for payment to the county board of such  
49 state aid as may be available for payment to it during  
50 the year.

Sec. 3. *Authority to Deposit with Sinking Fund Com-*  
2 *mission.*—A county board of education that deems it more  
3 advisable to apply a portion of the funds it receives under  
4 the provisions of this article toward the later financing  
5 of its school building program, rather than to spend all  
6 of it for current building and repairs, may with the ap-  
7 proval of the board of school finance deposit such portion  
8 with the sinking fund commission, to the credit of its  
9 permanent improvement fund. The amount so deposited  
10 shall in no way be subject to the limitations otherwise  
11 provided by law with respect to the size of the permanent  
12 improvement fund, and shall be in addition to the amount  
13 the county board is otherwise authorized to accumulate  
14 in such fund. The subsequent expenditure of the amount  
15 so deposited shall in all respects be subject to the pro-  
16 visions hereof with regard to conditions governing the

17 expenditure of funds received under the provisions of this  
18 article.

Sec. 4. *Conditions Concerning Expenditures; Separate  
2 Accounts and Reports; Approval of Plans and Specifica-  
3 tions.*—The expenditure of all funds received by a county  
4 board of education under the provisions of this article  
5 shall be subject to the following terms and conditions:

6 (1) The funds shall be expended only for the purposes  
7 specified in this article, and then only in conformity with  
8 the provisions of the act appropriating such funds.

9 (2) If after the receipt of any such funds a county board  
10 should become ineligible because of a failure to levy the  
11 maximum rates provided by law for general current ex-  
12 pense, for the permanent improvement fund, and for all  
13 necessary debt service, or because of a failure to impose  
14 the necessary additional levy, if the imposition of such  
15 additional levy was the basis on which it qualified, or  
16 because of a reduction in assessed valuations below the  
17 necessary level, if an increase in assessments was the basis  
18 on which it qualified, it shall not thereafter expend any  
19 of the remainder of such funds until the necessary levy  
20 or levies shall have been imposed, or the necessary in-  
21 crease in assessments shall again have been made, as the  
22 case may be.

23 (3) The county board shall keep separate accounts,  
24 setting forth accurately and in detail the purposes for  
25 which the funds were expended and the amount spent  
26 for each purpose, and at the close of each fiscal year shall  
27 make a report thereof to the board of school finance. The  
28 separate accounts and reports shall be in such form and  
29 detail as may be required by the board of school finance.

30 (4) The county board shall not expend any part of such  
31 funds for the purchase of a building site without prior  
32 approval by the board of school finance.

33 (5) The county board shall not expend any part of such  
34 funds for the construction of a new building or an addi-  
35 tion to an existing building, if such construction shall  
36 involve the expenditure of more than ten thousand dol-  
37 lars, without prior approval by the board of school finance  
38 of the plans and specifications for such building or addi-

tion. The board of finance shall give its approval to the plans and specifications as submitted, if it is satisfied that they are in conformity with the standard plans and specifications prescribed by the state board of education, as provided by law.

**Sec. 5. Penalties for Failure to Comply with Such Conditions.**—Any county superintendent of schools, or any member of a county board of education, who shall authorize or permit the expenditure of any funds in violation of any of the provisions of the preceding section, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment.

Whenever a county board of education shall expend any amount in violation of any of the provisions of the preceding section, the board of school finance shall withhold a like amount from any future state aid to which such county board would otherwise be entitled under the provisions of this article, and may in its discretion withhold such amount from any future state aid to which the county board would otherwise be entitled under any provision of law.

C

## CHAPTER 52

(House Bill No. 105—By Mr. Speaker, Mr. Flannery)

AN ACT to amend and reenact section eight, article ten, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the acceptance and disbursement of future federal funds allocated to the state for educational purposes.

[Passed March 5, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 10. Federal Aid and Gifts for Educational Purposes.

#### Section

8. Acceptance and disbursement of future federal funds allocated to state.

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

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

Section 8. *Acceptance and Disbursement of Future Federal Funds Allocated to State.*—The state board of education is hereby authorized and empowered to accept for the state of West Virginia, and expend for the purpose designated, any funds that may hereafter be made available to the board out of the federal treasury by an act or acts of Congress and allocated to this state for vocational education, or for the use or benefit of the state colleges and other state institutions under the direct control and supervision of the board, or for any other educational purpose.

The state superintendent of free schools is hereby authorized and empowered to accept for the state of West Virginia any funds that may hereafter be made available to the state department of education or to the state superintendent of free schools out of the federal treasury by an act or acts of Congress for current expense, capital outlay, free textbooks, or any other educational purpose in local public school units, or for any other educational purpose.

Subject to the provisions and conditions of applicable federal law with respect to the allocation and distribution of any federal funds for current expense purposes in local public school units, the state board of school finance is hereby authorized and empowered to allocate and distribute said federal funds in accordance with the following provisions:

1. Of said federal funds received, seventy-one per cent shall be allocated for teachers' salaries and the distribution to each county board of education shall be made on the basis of actual teachers employed at the end of the second month of the current school term and said allocated share of such funds shall be used in said county for the purpose of adding to the present minimum legal salaries the following increments:

36 (a) Ten dollars per month for all teachers holding  
37 emergency certificates based on less than two years of  
38 college training.

39 (b) Twenty-five dollars per month for all teachers hold-  
40 ing regular certificates based on less than four years of  
41 college training and all teachers holding emergency cer-  
42 tificates based on two or more years of college training.

43 (c) Sixty-five dollars per month for all teachers holding  
44 regular certificates based on college degrees.

45 All such increments may be reduced or increased on a  
46 proportionate basis in accordance with the amount of  
47 funds available under the seventy-one per cent allocation.

48 2. The balance of said federal funds, the equivalent of  
49 twenty-nine per cent of said funds, shall be distributed  
50 among the several counties. Such distribution shall be  
51 based on the net enrollment for the fourth school month  
52 of the current year and determined on a ratio that said  
53 net enrollment of each county bears to the total net en-  
54 rollment of the state.

## CHAPTER 53

(House Bill No. 83—By Mr. Powell, of Hampshire)

AN ACT to amend and reenact section two, article seven-  
teen, chapter eighteen of the code of West Virginia, one  
thousand nine hundred thirty-one, relating to the admis-  
sion and record of deaf and blind pupils in state in-  
stitutions.

[Passed March 12, 1949; in effect ninety days from passage. Approved by the  
Governor.]

### Article 17. West Virginia Schools for the Deaf and the Blind.

#### Section

#### 2. Admission and record of pupils.

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

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

Section 2. *Admission and Record of Pupils.*—All white  
2 deaf and blind youths resident in the state, between  
3 the ages of six and twenty-five years, shall be admit-  
4 ted to the institution on application to the principal,  
5 until the institution is filled. Applicants shall be ad-  
6 mitted in the order of their application. It shall be  
7 the duty of the principal to keep a careful record of  
8 the names of all applicants, with the dates of their  
9 admission and discharge, their ages, post-office ad-  
10 dresses, the names of their parents or guardians, and  
11 the degree, cause and circumstances of their deafness  
12 or blindness.

## CHAPTER 54

(House Bill No. 204—By Mr. Barger)

AN ACT to authorize the board of governors of West Virginia university and Potomac state school of West Virginia to expend from collections in the farm sales account of Potomac state school, an amount not to exceed seven hundred fifty dollars for the purchase of land.

[Passed February 18, 1949; in effect from passage. Approved by the Governor.]

### Section

1. Expenditure for purchase of land at Potomac state school.

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

Section 1. *Expenditure for Purchase of Land at Potomac State School.*—The board of governors of West Virginia university and Potomac state school of West Virginia university is hereby authorized to expend from the farm sales account of Potomac state school, a sum not to exceed seven hundred fifty dollars, for the purchase of  
7 ninety acres of land, more or less, adjacent to the present  
8 lands of Potomac state school.

## CHAPTER 55

(House Bill No. 317—By Mr. Speaker, Mr. Flannery)

AN ACT to amend and reenact section nine, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the election of president and vice president and to the filling of vacancies in the electoral college.

[Passed March 5, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 1. General Elections; Officers to be Chosen; Precincts.

#### Section

9. Election of president and vice president; filling of vacancies in the electoral college.

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

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

Section 9. *Election of President and Vice President; Filling of Vacancies in the Electoral College.*—The presidential electors shall meet in the office of the governor at the capitol of this state, on the day now appointed, or which shall hereafter be appointed, by the Congress of the United States and vote for the president and for the vice president of the United States in the manner prescribed by the constitution and the laws of the United States. If any of the electors so chosen fail to attend at the time appointed, the electors present shall appoint an elector in place of each one so failing to attend, and every elector so appointed shall be entitled to vote in the same manner as if he had been originally chosen by the people.

Each presidential elector shall receive as compensation the sum of ten dollars a day for attending such meeting, including the time spent in traveling to and from the place of meeting, and in addition thereto the sum of ten cents for every mile necessarily traveled in going to and returning from the place of meeting, by the most direct route.



## CHAPTER 56

(Senate Bill No. 167—By Mr. Bean)

AN ACT to amend and reenact section eleven, article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to meetings of the state election commission.

[Passed March 3, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 2. Registration of Voters.

#### Section

11. Meetings of state election commission.

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

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

- Section 11. *Meetings.*—The commission shall hold such  
2 meetings as may be called by the chairman, the governor,  
3 or the secretary of state.

3

## CHAPTER 57

(Com. Sub. for House Bill No. 378—Originating in the House Committee on the Judiciary)

AN ACT to amend and reenact sections two, sixteen and twenty-five, article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the permanent registration of voters.

[Passed March 12, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 2. Registration of Voters.

#### Section

2. Definitions.  
16. Appointment of registrars; qualifications and duties.  
25. Biennial or quadrennial check-up.

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

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

- Sec. 2. *Definitions.*—For the purpose of this article,
- 2 unless the context clearly requires a different meaning:
- 3 “Qualified voter” shall mean any person who possesses
- 4 the statutory and constitutional requirements for voting.
- 5 “Election” shall mean the procedure whereby the voters
- 6 of this state or any subdivision thereof elect persons to
- 7 fill public offices or vote on public questions.
- 8 “Any election” or “all elections” shall include every
- 9 general, primary, or special election held in this state,
- 10 or in any of its subdivisions, for the purpose of nominating
- 11 or electing federal, state, county, city, town or village
- 12 officers of any subdivision now existing or hereafter cre-
- 13 ated, or for voting upon any public question submitted
- 14 to the people of the state or any of the aforesaid sub-
- 15 divisions.
- 16 The masculine pronoun shall be construed to include
- 17 the feminine. “Subdivision” shall mean any county, city,
- 18 town, village or any other other unit in which the voters
- 19 are authorized to elect public officers or to vote upon
- 20 public questions submitted to them. “County court” shall,
- 21 where such tribunal has not been established, be con-
- 22 strued to mean the tribunal created in lieu thereof. “Clerk
- 23 of the county court” shall be construed to include any
- 24 authorized deputy.
- 25 “Office” shall be construed to mean public office.
- 26 “Public question” shall mean any issue or proposition,
- 27 now or hereafter required by the governing body of this
- 28 state or any of its subdivisions, to be submitted to the
- 29 voters of the state or subdivision for decision at elections.
- 30 “Initial registration” shall mean the first registration
- 31 under this article preparatory to the primary election of
- 32 the year one thousand nine hundred forty-two.
- 33 “Biennial check-up” shall mean the process by which
- 34 the registrars, during the year one thousand nine hundred

35 fifty, and every two years subsequent thereto, if in the  
36 discretion of the county court a biennial check-up is  
37 deemed necessary shall proceed to register all persons  
38 who are not registered, but who qualify for registration;  
39 or to check and, if necessary, alter, amend, correct, or  
40 cancel the registration records of those persons previously  
41 registered, including the acceptance of applications for  
42 transfer of the registration of any person previously regis-  
43 tered at another address within the county, or for the  
44 change of party affiliation.

45 "Quadrennial check-up" shall mean the process by  
46 which registrars, during the year one thousand nine hun-  
47 dred fifty-two, and every four years subsequent thereto,  
48 shall proceed to register all persons who are not registered,  
49 but who qualify for registration; or to check and, if neces-  
50 sary, alter, amend, correct, or cancel the registration rec-  
51 ords of those persons previously registered, including the  
52 acceptance of applications for transfer of the registration  
53 of any person previously registered at another address  
54 within the county, or for the change of party affiliation.

55 "Registration form" shall mean the unfilled form to be  
56 used for the registration of voters.

57 "Registrar" shall be construed to include deputy regis-  
58 trar. In determining or reckoning any period of time  
59 mentioned in this act the day upon which the act is done,  
60 paper filed, or notice given shall be excluded from, and  
61 the date of any election, hearing or other subsequent  
62 event, as the case may be, shall be included in the calcu-  
63 lation or reckoning; but if the last day upon which any  
64 act may be done, paper filed, or notice given, shall fall  
65 on a Sunday or legal holiday the next following ordinary  
66 business day shall be considered as the last day for such  
67 purpose.

Sec. 16. *Appointment of Registrars; Qualifications and*  
2 *Duties.*—The county court of each county shall, not less  
3 than eighteen nor more than twenty weeks prior to the  
4 date of a state-wide primary election, appoint two com-  
5 petent persons, for one or more but not to exceed ten  
6 voting precincts in the county, to act as registrars for  
7 the purpose of making a biennial or quadrennial check-up

8 required by this article. No person shall be eligible to  
9 appointment as a registrar, or in any way act as such,  
10 if he has been convicted of a felony or if he holds any  
11 elective or appointive office, or is a public employee,  
12 under the laws of this state or of the United States; or  
13 cannot read or write the English language; or is a can-  
14 didate to be voted for at such election. If any such regis-  
15 trar shall fail or refuse to serve or is properly dismissed,  
16 the vacancy shall be filled either by the county court or  
17 by the clerk thereof in vacation, in the manner pro-  
18 vided for the appointment of registrars. Each regis-  
19 trar before entering upon the discharge of his duties,  
20 shall take an oath that he will perform the duties of  
21 the office to the best of his ability, which oath shall be  
22 filed in the office of the clerk of the county court.

23 An equal number of such registrars shall be selected  
24 from the two political parties which, at the last preced-  
25 ing election, cast the highest number and next highest  
26 number of votes in the county in which the election is  
27 to be held. The county court shall, at least four weeks  
28 prior to making such appointment, request the county  
29 executive committee of each of the said two political  
30 parties to submit a list of names, equal to one-half of  
31 the total number to be appointed, of persons qualified  
32 to act as registrars; and the county court shall, if such  
33 lists are submitted, appoint the respective registrars  
34 therefrom, and shall notify each registrar of his ap-  
35 pointment. Every such list so presented shall be filed  
36 and preserved for one year by the clerk of such court  
37 in his office. Any and every act performed by any  
38 registrar under the provisions of this article shall be  
39 void unless performed in conjunction with a registrar  
40 of the opposite political party at the same time and  
41 place.

42 Before acting, all such registrars shall attend a ses-  
43 sion, or sessions, of instruction by the clerk of the  
44 county court, or some person designated by him, con-  
45 cerning the performance of their duties. For his at-  
46 tendance at such session, or sessions, not to exceed two  
47 in number, each registrar shall for each day he attends

48 be entitled to one day's compensation, as provided in  
49 the following section.

50 Immediately following such instruction the clerk of  
51 the county court shall deliver to the registrars a copy  
52 of the laws and regulations and reference to the regis-  
53 tering of voters, and all necessary forms and other sup-  
54 plies, including a certified list of all registered voters  
55 within the precinct for which such registrars were  
56 appointed, upon such form as may be prescribed by  
57 the secretary of state. Such registrar shall thereupon  
58 proceed together to make a house-to-house canvass  
59 in their precinct for the purpose of making the bien-  
60 nial or quadrennial check-up required by section twenty-  
61 five of this article. In making such check-up the regis-  
62 trars shall not again register any person who is already  
63 registered in such precinct, but shall determine whether  
64 or not such person is duly registered and qualified to  
65 vote therein.

66 For the purpose of making further corrections and  
67 of registering or transferring the registration of per-  
68 sons who were missed during the house-to-house can-  
69 vass or who have since become qualified to register  
70 in the precinct, the registrars shall sit together at some  
71 public place or places within the precincts assigned  
72 them for not less than one day beginning Monday of  
73 the sixth week preceeding the primary or general elec-  
74 tion and continuing for not more than ten days. The  
75 county court shall designate the place and fix the date  
76 or dates for such sittings in the precincts and shall cause  
77 notice thereof to be placed in at least ten conspicuous  
78 places in the precinct not less than five days before the  
79 date fixed for the first sitting therein. The clerk of  
80 the county court may publish a notice in two news-  
81 papers of opposite politics and of general circulation in  
82 the county, giving the time and places where such regis-  
83 trars shall sit. The clerk of the county court is also  
84 authorized to publish such notices as may be proper  
85 in his opinion to advise the electorate of the respective  
86 dates after which transfers and registration, and changes  
87 of registration, may not be made with respect to any  
88 general or primary election.

89 Upon the completion of the biennial or quadrennial  
90 check-up and immediately following the last sitting be-  
91 fore the election, the registrars shall return the records  
92 and lists to the clerk of the county court, together with  
93 an affidavit that the returns, records and lists returned  
94 to the clerk are true and correct to the best of their  
95 knowledge and belief. The clerk of the county court  
96 shall make the necessary changes in his other regis-  
97 tration records. The list checked by the registrars in  
98 each precinct shall be compared with the register of  
99 deaths kept by the clerk of the county court in his of-  
100 fice. Each person named in the list whose death has  
101 not been recorded shall be given proper notice by the  
102 clerk of the county court, that his registration has been  
103 cancelled and that in order to vote he must register  
104 again. The notice shall be mailed to such person's last  
105 address appearing on the registration record.

Sec. 25. *Biennial or Quadrennial Check-up.*—During  
2 the year one thousand nine hundred fifty and every two  
3 years subsequent thereto, there may be a biennial check-  
4 up if in the discretion of the county court such check-up  
5 is deemed necessary and advisable; there shall be a quad-  
6 rennial check-up in every county in the state, beginning  
7 with the year one thousand nine hundred fifty-two and  
8 every four years subsequent thereto, and the registrars,  
9 according to directions prescribed by the secretary of state  
10 and as provided in section sixteen of this article, shall pro-  
11 ceed to register the names of all persons not registered  
12 but who are qualified to register, and shall also check and,  
13 if necessary, alter, amend, correct or cancel the registra-  
14 tion records of the voters of the respective precincts, so as  
15 to provide a complete and accurate record of all persons  
16 qualified to vote.

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## CHAPTER 58

(Com. Sub. for House Bill No. 9—Originating in the House Committee on  
the Judiciary)

AN ACT to amend chapter three of the code of West Virginia,

one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be numbered article five-a, providing for the adoption, acquisition and use of voting machines in regular, special and primary elections; authorizing methods of leasing or purchasing of such machines; describing the equipment and ballot labels to be used, the manner of holding elections wherein such voting machines are used, and the canvass of the results thereof; and imposing penalties for violations thereof.

[Passed March 12, 1949; in effect from passage. Approved by the Governor.]

### **Article 5-a. Use of Voting Machines.**

#### **Section**

1. Use of voting machines authorized.
2. Voting machines; how adopted.
3. Duty of county court to acquire voting machines.
4. Voting machines, manner in which acquired.
5. Financing acquisition of voting machines.
6. Minimum requirements of voting machines.
7. Voting machine commission; creation and duties.
8. County clerk custodian of machines.
9. Printing of ballot labels and instruction cards.
10. Preparation of machines.
11. Vacancy filled after ballots are printed.
12. Notice to county court members and ballot commissioners; examination of machines.
13. Appointment of election boards; instruction.
14. Voting machine models and facsimile diagrams.
15. Delivery of machines; arrangements for voting.
16. Examination of machine by election officers before voting starts.
17. Machine in disrepair; reserve machine; certifying result of election.
18. Duties of election officers; primary elections; adjustment of machine.
19. Assistance to voters unable to read.
20. Absent voters' ballots; recording, disposition.
21. Challenged ballots.
22. Other necessary equipment and supplies.
23. Count of votes; machine to be locked and sealed; announcement of vote; return sheets.
24. Form of return sheets; posting results of election; delivery of return sheets.
25. How long machine to remain locked after election; court orders for examination of machine; contested elections.
26. Discrepancy in returns; recanvass of votes; notices required; correction of result.
27. Number of voters in precinct.
28. Tampering or impairing the use of voting machines; penalty.
29. Tampering or disarranging of voting machine by election officials and public officers; penalty.
30. False swearing or failure to disclose facts in affidavit by person soliciting voting machine bid; penalty.
31. Willful neglect of duty by election officer; penalty.
32. General law applicable to voting machines.

33. Use of voting machines authorized in municipal elections.  
34. Severability, if held unconstitutional.

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

That chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, numbered five-a, to read as follows:

Section 1. *Use of Voting Machines Authorized.*—Voting machines may be used for the purpose of registering or recording and computing votes cast in regular, special and primary elections, provided that the use thereof shall be governed by the terms, conditions, restrictions and limitations imposed by this article.

Sec. 2. *Voting Machines; How Adopted.*—Voting machines may be adopted for use in general, primary and special elections in any county by either of the following procedures, and not otherwise:

(1) By a majority of the members of the county court voting to adopt the same at a meeting regularly called in regular or special session: *Provided, however,* That such meeting shall be held not less than six months prior to a general election or six months prior to a primary election. If at such meeting, such county court shall enter an order of its intention to adopt the use of voting machines, it shall thereafter forthwith cause to be published a certified copy of such order in some newspaper of general circulation in such county. Such notice shall be published at least once a week for four successive weeks beginning not less than twenty days after the entry of such order, and a copy of such order shall be posted at the front door of the courthouse and at least three other public places in such county for a like period. Such county court shall not adopt the use of voting machines until ninety days after the entry of such order of its intention to adopt the same. Promptly after the expiration of ninety days after the entry of such order of intention to adopt the use of voting machines, if no petition has theretofore been filed with such county court requesting a referendum on the ques-



27 tion of adoption of voting machines as hereinafter pro-  
28 vided, such county court shall enter a final order adopting  
29 voting machines, and voting machines shall thereby be  
30 adopted.

31 If five per cent or more of the registered voters of  
32 such county shall sign a petition requesting that voting  
33 machines be not adopted for use in such county and  
34 such petition be filed with the county court of such  
35 county within ninety days after the entry of such order  
36 of intention to adopt the use of voting machines, such  
37 county court shall submit to the voters of such county  
38 at the next general or primary election, whichever shall  
39 first occur, the question: "Shall voting machines be  
40 adopted in..... County?" If this question  
41 be answered in the affirmative by a majority of the  
42 voters in such election upon the question, voting  
43 machines shall thereby be adopted. If such question shall  
44 not be answered in the affirmative by such majority,  
45 the use of voting machines shall not be adopted.

46 (2) By the affirmative vote of a majority of the  
47 voters of such county voting upon the question of the  
48 adoption of voting machines in such county. If five per  
49 cent or more of the registered voters of such county  
50 shall sign a petition requesting the adoption of voting  
51 machines for use in such county, and such petition be  
52 filed with the county court of such county, such county  
53 court shall submit to the voters of such county at the  
54 next general or primary election, following by not less  
55 than ninety days the date of the filing of such petition,  
56 the question: "Shall voting machines be adopted in  
57 ..... County?" If this question be answered  
58 in the affirmative by a majority of the voters of such  
59 county voting upon the question, voting machines shall  
60 thereby be adopted. If such question shall not be an-  
61 swered in the affirmative by such majority, the use of  
62 voting machines shall not be adopted.

63 If at any time after the adoption of voting machines  
64 in any county as herein provided, five per cent or more  
65 of the registered voters of such county shall sign a pe-  
66 tition requesting that the use of voting machines be ter-  
67 minated, and such petition be filed with the county

68 court of such county, such county court shall submit  
69 to the voters of such county at the next general or pri-  
70 mary election following by not less than ninety days  
71 the date of the filing of such petition. The question:  
72 "Shall the use of voting machines in \_\_\_\_\_  
73 County be terminated?" If this question be answered  
74 in the affirmative by a majority of the voters of such  
75 county voting upon the question, the use of voting  
76 machines in all future elections shall thereby be ter-  
77 minated; otherwise, the use of voting machines shall  
78 be continued.

79 Any vote pursuant to this section which results in a  
80 failure to adopt, or in a termination of, the use of voting  
81 machines shall not be construed to preclude any future  
82 proceeding by the voters or the county court of any  
83 county to adopt or readopt voting machines in a law-  
84 ful manner as provided herein.

Sec. 3. *Duty of County Court to Acquire Voting*  
2 *Machines.*—If the use of voting machines shall have  
3 been adopted as hereinbefore provided, it shall be the  
4 duty of the county court of such county to acquire the  
5 necessary number of voting machines to supply each  
6 election precinct within such county as soon as possible,  
7 and to acquire such reserve machine or machines as will  
8 be deemed necessary, and to acquire for each machine  
9 an instruction model.

10 If it shall be impossible for the county court to sup-  
11 ply each election precinct with a voting machine or  
12 voting machines for use at the next general election  
13 following the adoption of voting machines, as many  
14 voting machines shall be supplied for that election and  
15 the next succeeding elections as it is possible for the  
16 county court to acquire in the manner as hereinafter  
17 provided, and the machines so acquired may be used in  
18 such election precincts within the county as the county  
19 court may direct until it shall be possible to provide  
20 the requisite number of voting machines properly to  
21 equip all precincts within the county.

Sec. 4. *Voting Machines, Manner in which Ac-*  
2 *quired.*—Contracts for the purchase or lease of voting

3 machines shall be based on competitive bids. The  
4 county court shall solicit sealed bids by sending requests  
5 by mail to all known manufacturers and suppliers of  
6 voting machines which have been previously approved  
7 by the voting machine commission as hereinafter pro-  
8 vided. The award of contracts of purchase or lease shall  
9 be based on the quality, cost, specifications and suitability  
10 of the particular voting machines.

11 No bid shall be accepted by the county court unless  
12 accompanied by a contract which shall provide that in  
13 the event the bid is accepted the party or parties making  
14 the sale or lease shall:

15 (1) Guarantee in writing to keep the machine or  
16 machines in good working order for five years without  
17 additional cost to the county court.

18 (2) Warrant to defend and indemnify the county  
19 court against any claim for patent infringement, and  
20 in case any machine or machines shall be held to be an  
21 infringement of a valid patent, to obtain a license for  
22 the use of such patent on the machines sold or leased  
23 to the county court or to modify the machines so that  
24 the offending infringement is removed without alter-  
25 ing the mechanical efficiency or statutory requirements  
26 of the machines; all at the sole cost and expense of the  
27 supplier of the voting machines.

28 (3) Provide a bond with good corporate surety duly  
29 qualified to do business in West Virginia, conditioned  
30 upon the due performance of said guaranty and said  
31 warranty, in a penal sum to be fixed by the county  
32 court.

33 No bid shall be accepted by the county court unless  
34 the party or parties submitting the bid shall file with  
35 the bid an affidavit:

36 (1) disclosing the name and address of, and the  
37 amount of any contribution paid or to be paid to  
38 any individual, partnership, corporation or associa-  
39 tion, whether regularly or specially hired for the  
40 purpose, or partly for the purpose, of attempting  
41 to influence directly or indirectly the purchase  
42 or lease of the voting machine represented by the  
43 bid.

44 (2) declaring that no individual, partnership,  
45 corporation or association not disclosed in said affi-  
46 davit shall thereafter be regularly or specially  
47 hired and no contribution shall thereafter be paid  
48 for the purpose or partly for the purpose of at-  
49 tempting to influence directly or indirectly the pur-  
50 chase or lease of the voting machine represented by  
51 the bid.

52 For the purpose of this affidavit, the word "contri-  
53 bution" shall mean the payment, distribution, loan,  
54 advance, deposit, gift of money, property, benefit or  
55 other consideration, or any agreement providing for a  
56 payment, distribution, loan, advance, deposit, or gift  
57 of money, property, benefit, or other consideration at  
58 any future time.

Sec. 5. *Financing Acquisition of Voting Machines.*

2 —The county court may finance the acquisition of vot-  
3 ing machines by any one or any combination of the  
4 following methods:

5 (1) By purchasing the same and paying the pur-  
6 chase price therefor in cash from funds available from  
7 the maximum general levy or from any other lawful  
8 source.

9 (2) By leasing the same under written contract of  
10 lease, and paying the rentals therefor in cash from  
11 funds available from the maximum general levy or  
12 any other lawful source.

Sec. 6. *Minimum Requirements of Voting Mach-*  
2 *ines.*—A voting machine of particular make and design  
3 shall not be approved by the voting machine commis-  
4 sion or be purchased, leased, or used, by any county  
5 court unless it shall fulfill the following requirements:

6 (1) It shall secure or insure the voter absolute se-  
7 crecy in the act of voting, or, at the voter's election,  
8 shall provide for open voting.

9 (2) It shall be so constructed that no person except  
10 in instances of open voting, as herein provided for, can  
11 see or know for whom any voter has voted or is voting,  
12 and that no voter or other person can, while the mach-  
13 ine is unlocked for operation, see or otherwise ascertain

14 the numerical total of votes cast for any candidate or  
15 for or against any question.

16 (3) It shall permit each voter to vote at any elec-  
17 tion for all persons and offices for whom and which  
18 he is lawfully entitled to vote, whether or not the name  
19 of any such person appears on a ballot label as a can-  
20 didate; and it shall permit each voter to vote for as many  
21 persons for an office as he is lawfully entitled to vote for;  
22 and to vote for or against any question upon which he is  
23 lawfully entitled to vote.

24 (4) It shall preclude each voter from voting for  
25 any person or office or upon any question for whom  
26 or which and upon which he is not lawfully entitled  
27 to vote and from voting for more persons for any office  
28 than he is lawfully entitled to vote for, and from voting  
29 for any candidate for the same office and upon any  
30 question more than once.

31 (5) It shall permit each voter to deposit, write in,  
32 or affix upon devices to be provided for that purpose,  
33 ballots containing the names of persons for whom he  
34 desires to vote whose names do not appear upon the  
35 machine ballot labels.

36 (6) It shall permit each voter to change his vote for  
37 any candidate and upon any question appearing upon  
38 the ballot labels up to the time when he starts to regis-  
39 ter his vote.

40 (7) It shall correctly register and accurately count  
41 all votes cast for each candidate and for and against  
42 each question appearing upon the ballot labels.

43 (8) It shall permit each voter at any election, other  
44 than primary elections, to vote a straight party ticket  
45 by one device, and by one device to vote for all can-  
46 didates of one party for presidential electors; and to  
47 vote a mixed ticket selected from the candidates of  
48 any and all parties and from independent candidates.

49 (9) It shall be capable of adjustment by election  
50 officers at a primary election so as to permit each  
51 voter to vote only for the candidates of the party with  
52 which he has declared his affiliation, and so as to pre-  
53 clude him from voting for any candidate seeking nom-  
54 ination by any other political party, and so as to permit

55 each voter to vote for the candidates, if any, for non-  
56 partisan nomination or election.

57 (10) It shall have separate voting devices for can-  
58 didates and questions, which shall be arranged in sep-  
59 arate rows or columns. It shall also be arranged so  
60 that one or more adjacent rows or columns may be  
61 assigned to the candidates of each political party at  
62 primary elections.

63 (11) It shall have a public counter, or other device,  
64 the register of which is visible on the outside of the  
65 machine and which shall show the total number of  
66 voters who have voted on that machine in the election;  
67 also candidate and question counters or other devices  
68 which shall not be visible on the outside of the mach-  
69 ine when the machine is unlocked for operation, and  
70 upon which are registered numerically the total votes  
71 cast for each candidate and question appearing on the  
72 ballot labels; also a protective counter or other device  
73 which will record the cumulative total number of  
74 movements of the registering mechanism.

75 (12) It shall be provided with locks and seals by  
76 the use of which all movement of the registering mech-  
77 anism is prevented, both before the polls are open or  
78 before the operation of the machine for an election is  
79 begun, and immediately after the polls are closed or  
80 after the operation of the machine for an election is  
81 completed.

82 (13) It shall have the capacity to contain the names  
83 of candidates constituting the tickets of at least nine  
84 political parties, and to accommodate the wording of  
85 at least fifteen questions.

86 (14) It shall be durably constructed of material of  
87 good quality and in a workmanlike manner and in a  
88 form which shall make it safely transportable.

89 (15) It shall be so constructed with frames for the  
90 placing of ballot labels and with transparent devices  
91 for the protection of such labels, that the labels on which  
92 are printed the names of candidates and their respective  
93 parties, titles of offices, and wording of questions shall  
94 be reasonably protected from mutilation, disfigurement  
95 or disarrangement.

96 (16) It shall bear a number that will identify it or  
97 distinguish it from any other machine.

98 (17) It shall be so constructed that a voter may  
99 easily learn the method of operating it and may expe-  
100 ditiously cast his vote for all candidates of his choice.

101 (18) It shall be accompanied by a mechanically oper-  
102 ated instruction model which shall show the arrange-  
103 ment of ballot labels, party columns or rows, and  
104 questions.

Sec. 7. *Voting Machine Commission; Creation and*  
2 *Duties.*—There is hereby created a voting machine  
3 commission, to be composed of the secretary of state, and  
4 two persons appointed by the governor, by and with the  
5 consent of the Senate, who shall be mechanical experts  
6 and not members of the same political party. The term  
7 of office of such commissioners shall be four years, except  
8 that the commissioners appointed by the governor shall  
9 be subject to removal at his pleasure, and that any sec-  
10 retary of state, in surrendering the duties of his office,  
11 shall be succeeded on the commission by the succeeding  
12 secretary of state. No member of the commission shall  
13 have any interest in any voting machine.

14 Any person or corporation owning or being inter-  
15 ested in any voting machine may apply to said commis-  
16 sion to the end that such machine may be examined  
17 and a report be made on its accuracy, efficiency, capac-  
18 ity, and safety. The mechanical experts of the com-  
19 mission shall examine the machine and make full report  
20 thereon to the secretary of state. They shall state in  
21 the report whether or not the machine so examined  
22 complies with the requirements of this article and can  
23 be safely used by voters at elections under the con-  
24 ditions prescribed in this article. If the report be in  
25 the affirmative upon said question, the machine shall  
26 be deemed approved by the commission and the machine  
27 of its make and design may be adopted for use at elec-  
28 tions as herein provided. Any form of voting machine  
29 not so approved shall not be used at any election.  
30 Each of the two mechanical experts on the commis-  
31 sion shall be entitled to two hundred dollars for his

32 compensation and expenses in making such examin-  
33 ation and report, and such compensation shall be paid  
34 by the person or corporation applying for such exam-  
35 ination, which sum shall be paid in advance of making  
36 the examination and which sum shall be the sole com-  
37 pensation to be received by any such expert for his  
38 work hereunder.

Sec. 8. *County Clerk Custodian of Machines.*—

2 When voting machines are acquired by any county  
3 court, they shall be immediately placed in the custody  
4 of the county clerk, and shall remain in his custody  
5 at all times except when in use at an election or when  
6 in custody of a court or court officers during contest  
7 proceedings. The clerk shall see that the machines are  
8 properly protected and preserved from damage or un-  
9 necessary deterioration, and shall not permit any un-  
10 authorized person to tamper with them. The clerk shall  
11 also be charged with the duty of keeping the machines  
12 in repair and of preparing the same for voting.

Sec. 9. *Printing of Ballot Labels and Instruction*

2 *Cards.*—The ballot commissioners of any county in which  
3 voting machines are to be used in any election shall  
4 cause to be printed and ready for use at such election  
5 five sets of ballot labels for each precinct in which a  
6 machine is to be used. Each such set shall contain  
7 the name of each candidate and each question to be  
8 voted upon. All ballot labels shall be clearly printed  
9 or typed in black ink on clear, white material, of such  
10 size as will fit the ballot frames. One set of ballot labels  
11 shall be inserted in the machine prior to the delivery  
12 of the machine to the polling place as hereinafter pro-  
13 vided. Two sets of ballot labels shall be placed in the  
14 custody of the election commissioners of each precinct  
15 for use in the event the set so inserted in the machine  
16 becomes mutilated or damaged. The remaining two  
17 sets shall be inserted in or affixed to the facsimile dia-  
18 grams, as hereinafter provided.

19 The ballot commissioners shall also cause to be printed  
20 a supply of instruction cards and facsimile diagrams  
21 to be used as hereinafter provided.



Sec. 10. *Preparation of Machines.*—Upon receiving the printed ballot labels, the county clerk shall place them in the ballot frames of the voting machines in such manner as will most nearly conform to the arrangement prescribed for paper ballots, and as will clearly indicate the party designation or emblem, if any, of each candidate. Each column or row containing the names of the office and candidates for such office shall be so arranged as to indicate clearly the office for which the candidate is running. The ballot labels containing the names of candidates required by law to be rotated within each office division shall be inserted in the ballot frames of the several voting machines to be used in the election in such a manner that each candidate shall appear at the top, the bottom and at such intermediate positions within the proper office division an equal number of times.

The county clerk shall then see that the counters referred to in subsection eleven of section six of this article are set at zero (000) and shall lock the operating device and mechanism and devices protecting the counters and ballot labels. The clerk shall then enter in an appropriate book, opposite the number of each precinct, the identifying or distinguishing number of the specific voting machine to be used in that precinct.

Sec. 11. *Vacancy Filled After Ballots are Printed.*  
—If a nomination to fill a vacancy be made by a political committee or the chairman thereof and be certified to the ballot commissioners after the ballot labels to be used at the ensuing election shall have been printed, it shall be lawful for the chairman of the party executive committee for the political division to provide, or cause to be provided and deliver, or cause to be delivered, to the county clerk, a sufficient number of ballot labels containing the name of such candidate: *Provided, however,* That such ballot labels conform to the specifications as set forth in section nine of this article. If such ballot labels are furnished to the clerk of the county court before the machines are delivered to the election precincts, the clerk, with the advice and con-

16 sent of the ballot commissioners, shall cause such ballot  
17 labels to be inserted in the proper ballot frames.

Sec. 12. *Notice to County Court Members and Ballot Commissioners; Examination of Machines.*—Upon  
2 completing the preparation of the machines in accordance with the provisions of section ten of this article,  
3 and not later than seven days before the day of the election, the county clerk shall notify the members of the  
4 county court and the ballot commissioners that the machines are ready for use. Thereupon the members of the  
5 county court and the ballot commissioners shall convene  
6 at the office of the county clerk, or at such other place  
7 wherein the voting machines are stored, not later than  
8 five days before the day of the election, and shall examine  
9 the machines to determine whether the requirements of  
10 section ten of this article have been met. Any candidate,  
11 and one representative of each political party having candidates to be voted on at the election, may be present  
12 during such examination. If the machines are found  
13 to be in proper order, the members of the county court  
14 and the ballot commissioners shall endorse their approval  
15 in the book in which the county clerk entered the numbers of the machines opposite the numbers of the precincts.  
16 The county clerk shall then deliver the keys to  
17 the voting machines to the ballot commissioners who shall  
18 give a receipt for the keys, which receipt shall contain  
19 identification of such keys. Not later than three days before the election the election commissioner of each precinct,  
20 who shall have been previously designated by the  
21 ballot commissioners, shall attend at the office of the  
22 clerks of the circuit and county courts of such county to  
23 receive the key or keys to the device covering the registering counters and such other keys as may be necessary  
24 for the operation of the machine in registering votes,  
25 and to receive the other necessary election records, books,  
26 and supplies required by law. Such election commissioners shall receive the per diem mileage rate prescribed by  
27 law for this service. Such election commissioners shall  
28 give the ballot commissioners a receipt for such keys, rec-

38 ords, books and supplies, and such receipt shall contain  
39 identification of such keys. The master key and all other  
40 keys shall remain in the possession of the clerk of the  
41 county court.

Sec. 13. *Appointment of Election Boards; Instruction.*—The provisions of section nine of article five and section fifteen of article four of this chapter with respect to the number of election officers in each precinct shall not apply to precincts in counties in which voting machines have been adopted, and the county court of such county shall appoint, subject to all other provisions of section nine of article five and section fifteen of article five of this chapter, a uniform election board, to consist of three election commissioners and two poll clerks, to serve in each precinct.

The county court shall call the necessary meeting or meetings for the instruction of all election officials in the use of voting machines. Such meeting or meetings shall be held and the proper instruction given not less than seven days prior to any election in which voting machines are to be used. No election officer, upon being so notified to appear for instruction, shall fail without just cause to do so. If any officer does so fail to appear, the county court may appoint some other qualified person, and such person, after instruction, shall act in the place of the defaulting officer: *Provided, however,* That if such defaulting officer was appointed by the county court upon the written recommendation of a county executive committee as provided in section fifteen of article four and in section nine of article five of this chapter, the county court shall give written notice of such default to such county executive committee and appoint a person to take the place of such defaulting person upon the recommendation of such county executive committee. The election officers shall receive the per diem mileage rate prescribed by law for attending such instruction meetings.

Sec. 14. *Voting Machine Models and Facsimile Diagrams.*—For the instruction of the voters on any elec-

tion day there shall be provided for each polling place one instruction model for each voting machine. Each such instruction model shall be constructed so as to provide a replica of a portion of the face of the voting machine, and shall contain the arrangement of the ballot labels, party columns or rows, office columns or rows, and questions. Fictitious names shall be inserted in the ballot labels of the models. Such models shall be located on the election officers' tables or in some other place in which the voter must pass to reach the voting machine. Each voter, upon request, before voting, shall be offered instruction by the election officers in the operation of the voting machine by use of the instruction model, and each voter shall be given ample opportunity to operate the model himself.

The ballot commissioners shall also provide facsimile diagrams, at least two of which shall be posted on the walls of each polling place. The facsimile diagrams shall be exact diagrams of the face of the voting machines to the end that the voter may become familiar with the location of the parties, offices, candidates and questions as they appear on the voting machine to be used in his precinct. Ballot labels may be affixed to the diagrams to insure that the position of the names of the candidates in each office division shall appear accurately on the diagrams of each precinct.

Sec. 15. *Delivery of Machines; Arrangements for Voting.*—The county clerk shall deliver or cause to be delivered each voting machine to the polling place where it is to be employed. Such delivery shall be made not less than one hour prior to the opening of the polls. At the time of the delivery of the voting machine the operating device and mechanism and the device covering the registering counters shall be securely locked. The election commissioners shall then cause the machine to be arranged in the voting place in such manner that the front of the machine, on which the ballot labels appear, will not be visible, when the machine is being operated, to any person other than the voter if the voter shall elect to close the curtain, screen or hood furnished with the voting machine.

Sec. 16. *Examination of Machine by Election Officers Before Voting Starts.*—Before permitting the first voter to vote, the election officers shall examine the machine to ascertain whether it has been operated since the public counters referred to in subsection eleven of section six of this article were set at zero (000) and to ascertain whether the ballot labels are arranged as specified on the facsimile diagram of the precinct. If the machine indicates that it has been operated or if the ballot labels are arranged incorrectly, the officers shall not unlock the operating device or mechanism, but shall immediately secure the attendance of one or more members of the county court and one or more of the ballot commissioners, who shall reset the counters at zero (000) and then relock the device covering the counters, or properly arrange the ballot labels, as the case may be, in the presence of the election officers. If the attendance of such members of the county court and ballot commissioners cannot be obtained before the time for opening the polls or within one hour thereafter, the election officers shall notify the county clerk of the foregoing facts and obtain from such county clerk a reserve voting machine, and thereafter proceed to conduct the election. Any reserve machine so used, shall be prepared for use by the county clerk or his duly appointed deputy and said reserve machine shall be delivered and examined in the same manner as hereinbefore provided. The machine found to have been operated or provided with incorrect ballot labels shall be returned immediately to the custody of the county clerk who shall then promptly cause such machine to be repaired in order that it may be used as a reserve machine if needed.

Sec. 17. *Machine in Disrepair; Reserve Machine; Certifying Result of Election.*—If, during the conduct of an election, a machine becomes in a state of disrepair so that it cannot be operated in a manner that will comply with the provisions of this article, the election officers shall lock or seal the machine in such manner as to prevent further voting thereon and shall record the numbers

8 shown by the public counter. Then the election officers  
9 shall secure from the county clerk a reserve voting ma-  
10 chine, which shall be prepared for use, delivered and  
11 examined in the same manner as hereinbefore provided,  
12 and shall thereafter proceed to conduct the election.  
13 When the polls are closed, both the original and reserve  
14 voting machines shall be examined and the votes thereon  
15 registered shall be counted as provided in section twenty-  
16 •three of this article and the aggregate number of votes  
17 cast on both machines for each candidate and on each  
18 question shall be certified as the result of the election  
19 in that precinct.

Sec. 18. *Duties of Election Officers; Primary Elec-*  
2 *tions; Adjustment of Machine.*—(1) The election of-  
3 ficers shall constantly and diligently maintain a watch  
4 in order to see that no person votes more than once  
5 and to prevent any voter from occupying the voting  
6 machine more than five minutes. (2) In primary elec-  
7 tions, before a voter is permitted to use the voting  
8 machine, the election officer representing the party  
9 to which the voter belongs shall adjust the machine  
10 so that the voter will be able to vote only for the can-  
11 didates who are seeking nomination on the ticket of  
12 the party with which the voter is affiliated. (3) If  
13 the machine is so constructed as to require adjustment  
14 after one person has voted before another person can  
15 vote, the election officers shall so adjust it after each  
16 person has voted.

Sec. 19. *Assistance to Voters Unable to Read.*—  
2 Any person who shall have indicated upon his registra-  
3 tion record that he is unable, by means of physical dis-  
4 ability, or illiteracy, to write may ask for assistance  
5 from two election officers of opposite political affilia-  
6 tions to whom he shall thereupon declare his choice of  
7 candidates and his position on questions appearing on  
8 the ballot labels; such officers, in the presence of the  
9 voter and of each other shall thereupon cause such  
10 voter's declared choices to be registered by the machine  
11 as votes.

Sec. 20. *Absent Voters' Ballots; Recording, Dispo-*

2 *sition.*—When absent voters' ballots have been voted  
3 and delivered to the election board of any precinct, the  
4 election commissioners shall as time permits proceed  
5 to determine the legality of such ballots as prescribed  
6 in sections one to fifteen of article six of this chapter,  
7 and shall prior to the close of the polls, before sealing  
8 the operating lever and before unlocking the counter  
9 compartment, vote or record such votes on the voting  
10 machine. Such recording of absent voters' ballots shall  
11 be done by one of the election commissioners and the  
12 act of casting such votes shall be performed in the pres-  
13 ence, and under the careful observation and full view,  
14 of all members of the precinct election board, and the  
15 votes as indicated by the voting pointers shall not be  
16 registered until each member of such board is satis-  
17 fied that the arrangement of such voting pointers  
18 fully carries out the intent of the voter as shown by  
19 the cross marks on the paper ballot.

20 After completion of the count, absentee ballots shall  
21 be enclosed in a sealed package, properly endorsed, and  
22 returned and filed with the statement of returns.

Sec. 21. *Challenged Ballots.*—If the right of any  
2 person to vote is challenged in accordance with sec-  
3 tion twenty-five, of article five or section seventeen-a of  
4 article four of this chapter, such person shall not be per-  
5 mitted to cast his vote by the use of the voting machine,  
6 but shall be supplied by the election commissioners  
7 at the polling place with an official printed ballot pre-  
8 pared under section twelve of article four of this chap-  
9 ter or section four of article five of this chapter, and  
10 such ballot shall be received subject to sections twenty-  
11 five (a) and thirty-one (a) of article five or sections  
12 seventeen-b and eighteen-a of article four of this chapter.

Sec. 22. *Other Necessary Equipment and Supplies.*  
2 —In addition to the other equipment and supplies re-  
3 quired by this article, there shall be provided for each  
4 precinct a sufficient number of printed ballots for the  
5 use of voters whose right to vote is challenged, and  
6 the necessary equipment and supplies for the reception  
7 and safe keeping of absentee voters' ballots.

Sec. 23. *Count of Votes; Machine to Be Locked and Sealed; Announcement of Vote; Return Sheets.*—(1) At the count of the votes in any such precinct, any candidate or his individual representative may witness and check the count of the votes therein.

(2) As soon as the polls are closed, and the last voter has voted, the election officers shall immediately lock and seal the operating lever or mechanism of the machine so that the voting and counting mechanism will be prevented from operation, and shall then compare the number of voters, as shown by the public counter of the machine, with the number of those who have voted, as shown by the protective or accumulative counter or device. The election officers of each precinct shall then sign a certificate stating: (a) that the machine has been locked against voting and sealed; (b) the number of voters, as shown by the public counters; (c) the number registered on the protective or accumulative counter or device, if any; and (d) the number or other designation of the voting machine; and such certificate shall be returned by the precinct election officers to the ballot commissioners.

(3) The election officers in the presence of any candidate or his individual representative, if any, shall then make visible the registering counters, and for that purpose shall unlock and open the doors or other covering concealing the same, giving full view of all the counter numbers. The election officers shall, under the scrutiny of such representatives, and in the order of the offices as their titles are arranged on the machine, read and announce, in distinct tones, the results as shown by the counter numbers for each candidate and for and against each question voted on. The counters shall not be read consecutively along the party rows or columns but shall always be read along the office columns or rows, completing the canvass for each office or question before proceeding to the next. The vote as registered shall be entered by the election officers, in ink, on triplicate return sheets, and also on a general return sheet and statement, all of which, after the count is completed, shall be signed by the elec-



tion officers. The total vote cast for each candidate, and for and against each question, shall then be computed and entered on the general and triplicate return sheets and statement. There shall also be entered on the general return sheet and statement the number of voters who have voted, as shown by the poll books, and the number who have voted on each machine, as shown by the public counters, and also the number registered on the protective counter on each machine immediately prior to the opening of the polls and immediately after the closing thereof and sealing of the machine. The number or other designation of each machine used shall also be entered thereon. In the case of primary elections, triplicate return sheets shall be prepared for each party. The registering counters of the voting machines shall remain exposed to view until the returns and all other reports have been fully completed.

(4) The proclamation of the results of the votes cast shall be announced distinctly and audibly by one of the election officers, who shall read the name of and votes cast for each candidate, and the votes cast for and against each question submitted. During such proclamation ample opportunity shall be given to any person lawfully present to compare the results so announced with the counter dials of the machine, and any necessary corrections shall then and there be made by the election officers, after which the doors or other cover of the voting machine shall be closed and locked and the return sheets shall be signed by each of the election officers. If any election officers shall decline to sign such return, he shall state his reason therefor in writing, and a copy thereof, signed by him, shall be enclosed with such return. Each of the return sheets shall be enclosed in a separate envelope, which shall be securely sealed with sealing wax, or other sealing material, and each of the election officers shall write his or her name across the fold of the envelope. One of the triplicate returns shall be directed and delivered to the clerk of the county court of the county in which the election is being held, one to the circuit court clerk of

83 such county and one to the secretary of the state at  
84 Charleston, West Virginia, and the general return sheet  
85 and statement shall be directed and immediately de-  
86 livered to the clerk of the county court of such county.  
87 The envelope shall have endorsed thereon a certifi-  
88 cate of the election officers, stating the number of  
89 the machine, the precinct where it has been used, the  
90 number of the seal, and the number registered on the  
91 protective counter at the close of the polls.

92 (5) As soon as possible after the completion of  
93 the count, the election officers shall return to the county  
94 court and the ballot commissioners the keys to the vot-  
95 ing machine received and receipted for by them, and  
96 the clerk of the county court shall have the voting  
97 machine properly boxed or securely covered and re-  
98 moved from the polling place to a proper and secure  
99 place of storage.

Sec. 24. *Form of Return Sheets; Posting Results*  
2 *of Election; Delivery of Return Sheets.*—The general re-  
3 turn sheet, triplicate return sheets, and statement, shall  
4 be printed to conform with the make of voting machine  
5 used. The designating number and letter, if any, on  
6 the counter for each candidate shall be reprinted  
7 thereon opposite the candidate's name. Immediately  
8 after the vote has been ascertained, the above men-  
9 tioned return sheets shall be forthwith delivered to the  
10 respective persons to whom they are addressed as pro-  
11 vided by the general election laws.

Sec. 25. *How Long Machine to Remain Locked*  
2 *After Election; Court Order for Examination of Mach-*  
3 *ine; Contested Elections.*—(1) For a period of fifteen  
4 days following any primary election, and for a period  
5 of thirty days following any general election or spe-  
6 cial election, the voting machine shall remain locked  
7 against voting, except that it may be opened and all  
8 the data and figures therein examined, upon the order  
9 of any court of competent jurisdiction, or judge thereof,  
10 or by direction of any legislative committee author-  
11 ized and empowered to investigate and report upon  
12 contested elections affected by the use of such machine,

13 and such data and such figures shall be examined by  
14 such court, judge or committee in the presence of  
15 the officer having the custody of the machine. In the  
16 event of a contest of election the court in which such  
17 contest is pending or the committee before which con-  
18 test is being heard may, upon motion of any party  
19 to such contest, issue an order requiring that such  
20 voting machines shall remain continuously locked for  
21 such further time as may be reasonable or necessary,  
22 with due regard for the preparation of such machines  
23 for succeeding primary, general or special election, but  
24 in no event shall such order compel that the machine  
25 remain locked to a time within thirty days next pre-  
26 ceding such approaching primary, general or special  
27 election.

28 (2) During the period when such machine is re-  
29 quired to be kept locked, the keys thereto shall remain  
30 in the possession of the county court and ballot com-  
31 missioners. After such period, it shall be the duty  
32 of the county court and ballot commissioners to re-  
33 turn such keys to the clerk of the county court.

Sec. 26. *Discrepancy in Returns; Recanvass of*  
2 *Votes; Notices Required; Correction of Result.*—When-  
3 ever it appears that there is a discrepancy in the re-  
4 turns of any precinct, or it is alleged in a petition of  
5 three voters of any precinct, verified by affidavit, that  
6 an error, although not apparent on the face of the re-  
7 turns, has been committed therein, the canvassing boards  
8 shall summon the officers of election of the precinct,  
9 and such officers, in the presence of the board of can-  
10 vassers, shall make a record of the number of the seal  
11 upon the voting machine, and, without unlocking the  
12 machine against voting, shall recanvass the vote cast  
13 thereon. Before causing such recanvass, the board of  
14 canvassers shall give notice in writing to the county  
15 clerk and to each candidate, and to the chairman of  
16 the county executive committee of each party af-  
17 fected by the canvass, and each such candidate may be  
18 present in person, or by attorney, and each of such  
19 parties may send two representatives to be present at

20 such recanvass. If, upon such recanvass, it is found  
21 that the original canvass of the returns has been cor-  
22 rectly made from the machine, and that the discrep-  
23 ancy still remains unaccounted for, the board of can-  
24 vassers with the assistance of the county clerk, in the  
25 presence of the ballot commissioners and the candi-  
26 dates and their representatives who may be present,  
27 shall unlock the voting and counting mechanism of  
28 the machine, and shall proceed thoroughly to examine  
29 and test the machine to determine and reveal the true  
30 cause, if any, of the discrepancy in returns from such  
31 machine. Each registering counter shall be reset at  
32 zero (000) before it is tested, after which it shall be  
33 operated at least one hundred times. After the com-  
34 pletion of such examination and test, the county clerk  
35 shall then and there prepare a statement, in writing,  
36 giving in detail the result of the examination and test,  
37 and such statement shall be witnessed by the persons  
38 present, and shall be filed with the board of can-  
39 vassers. But the votes as registered on such machine  
40 shall nevertheless be accepted on the canvass as votes  
41 cast.

Sec. 27. *Number of Voters in Precinct.*—The pro-  
2 visions of section ten of article one of this chapter with  
3 respect to the number of voters to be contained in each  
4 precinct shall not apply to precincts in counties in  
5 which voting machines have been adopted and the  
6 county courts of such county, subject to other pro-  
7 visions of this chapter with respect to the altering or  
8 changing of the boundaries of voting precincts, may  
9 change the boundaries of precincts or consolidate pre-  
10 cincts, as practicable, to achieve the maximum advan-  
11 tage from the use of voting machines.

Sec. 28. *Tampering or Impairing the Use of Voting  
2 Machines; Penalty.*—Any person not an election of-  
3 ficer or other public official who shall tamper or at-  
4 tempt to tamper with such voting machines, or in any  
5 way intentionally impair or attempt to impair its use,  
6 and any such person who shall be guilty of or shall  
7 attempt any dishonest practice upon any such voting

8 machine, or with or by its use, shall be deemed guilty  
9 of a felony, and, upon conviction thereof, shall be con-  
10 fined in the penitentiary for not less than one year  
11 nor more than ten years.

Sec. 29. *Tampering or Disarranging of Voting Machine*  
2 *by Election Officials and Public Officers; Penalty.*—  
3 Any clerk of a county court, county commissioner, ballot  
4 commissioner, election commissioner, or poll clerk, or  
5 any custodian, technician, or other public official author-  
6 ized to take part in the holding of an election or in pre-  
7 paring for an election, who, with intent to cause or permit  
8 any voting machine to fail to register correctly all votes  
9 cast thereon, who tampers with or disarranges such ma-  
10 chine in any way, or any part or appliance thereof, or  
11 who causes or consents to the use of said machine for  
12 voting at any election with knowledge of the fact that  
13 the same is not in order, or not perfectly set and adjusted  
14 so that it will correctly register all votes cast thereon, or  
15 who, with the purpose of defrauding or deceiving any  
16 voter or of causing it to be doubtful for what ticket or  
17 candidate or candidates or proposition any vote is cast,  
18 or of causing it to appear on said machine that the votes  
19 cast for one ticket, candidate or proposition, were cast for  
20 another ticket, candidate or proposition, removes, changes  
21 or mutilates any ballot label on said machine or any part  
22 thereof, or does any other thing intended to interfere  
23 with the validity or accuracy of the election, shall be  
24 deemed guilty of a felony and upon conviction thereof  
25 shall be confined in the penitentiary not less than one  
26 year nor more than ten years.

Sec. 30. *False Swearing or Failure to Disclose Facts in*  
2 *Affidavit by Person Soliciting Voting Machine Bid; Pen-*  
3 *alty.*—Any person who shall knowingly or willfully make  
4 any false or fraudulent statement, or who shall knowingly  
5 or willfully fail to disclose any material fact in the affi-  
6 davit required by subsection four of section four of this  
7 article to be filed by such party or parties submitting bids  
8 to a county court for the sale or lease of voting machines,  
9 shall be guilty of a felony, and, upon conviction thereof

10 shall be punished by a fine of not less than one thousand  
11 dollars nor more than five thousand dollars or imprison-  
12 ment in the state penitentiary for not less than one year  
13 nor more than three years, or both, in the discretion of  
14 the court.

15 In construing this section, the term "person" shall in-  
16 clude an individual, partnership, committee, association,  
17 and any other organization or group of persons.

Sec. 31. *Willful Neglect of Duty by Election Officer;*  
2 *Penalty.*—Any public officer or election officer upon whom  
3 any duty is imposed by this article and who shall willfully  
4 omit or neglect to perform such duty, or who shall do  
5 any act prohibited in this article for which punishment is  
6 not otherwise provided herein, shall be guilty of a mis-  
7 demeanor, and, upon conviction thereof shall be punished  
8 by a fine of not less than five hundred dollars nor more  
9 than one thousand dollars, or imprisonment in the county  
10 jail for not less than sixty days nor more than one year,  
11 or both, in the discretion of the court.

Sec. 32. *General Law Applicable to Voting Machines.*—  
2 Except as modified by this article, the general laws apply-  
3 ing to regular, special and primary elections shall apply  
4 to elections conducted with the use of voting machines.  
5 If it shall be impracticable for the county court of any  
6 county, after the adoption of voting machines by such  
7 county, to supply the necessary voting machines to each  
8 precinct of such county for use in any election, the hold-  
9 ing of any election in such precincts which have not been  
10 supplied with voting machines, shall be governed by the  
11 general laws with respect to conducting a regular, special  
12 and primary election by the use of printed ballots.

Sec. 33. *Use of Voting Machines Authorized in Munic-*  
2 *ipal Elections.*—The county court of any county which  
3 has adopted the use of voting machines is hereby author-  
4 ized to make such machines available to any municipality  
5 in, or partly in, such county for use in elections conducted  
6 by such municipality, and the use of voting machines by  
7 such municipality shall be upon such terms and conditions

- 8 as may be agreed upon between the county court and the  
9 municipality.

Sec. 34. *Severability, if held Unconstitutional.*—If any  
2 section, subsection, paragraph, sentence, or clause of this  
3 article is for any reason held invalid or to be unconstitu-  
4 tional, such decision shall not affect the remaining portion  
5 of this article, or any section or part thereof.

## CHAPTER 59

(Senate Bill No. 73—By Mr. Bean)

AN ACT to amend and reenact section two, article one, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the public uses for which private property may be taken or damaged in condemnation proceedings.

[Passed February 21, 1949; in effect from passage. Approved by the Governor.]

### Article 1. Right of Eminent Domain.

#### Section

2. Public uses for which private property may be taken or damaged.

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

That section two, article one, chapter fifty-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. *Public Uses For Which Private Property May Be Taken or Damaged.*—The public uses for which private  
3 property may be taken or damaged are as follows:  
4 (a) For the construction, maintenance and operation of  
5 railroad and traction lines (including extension, lat-  
6 eral and branch lines, spurs, switches and side tracks),  
7 canals, public landings, wharves, bridges, public roads,  
8 streets, alleys, parks and other works of internal im-  
9 provement, for the public use;  
10 (b) For the construction and maintenance of tele-  
11 graph, telephone, electric light, heat and power plants,

12 systems, lines, transmission lines, conduits, stations  
13 (including branch, spur and service lines), when for  
14 public use;

15 (c) For constructing, maintaining and operating pipe  
16 lines, plants, systems and storage facilities for manu-  
17 facturing gas and for transporting petroleum oil, natural  
18 gas, manufactured gas, and all mixtures and combina-  
19 tions thereof, by means of pipes, pressure stations or  
20 otherwise, (including the construction and operation of  
21 telephone and telegraph lines for the service of such  
22 systems and plants), and for underground storage areas  
23 and facilities, and the operation and maintenance there-  
24 of, by gas public utilities selling natural gas at retail in  
25 West Virginia for the injection, storage and removal of nat-  
26 ural gas in subterranean oil and/or gas bearing stratum,  
27 which, as shown by previous exploration of the stratum  
28 sought to be condemned and within the limits of the reser-  
29 voir proposed to be utilized for such purposes, has ceased  
30 to produce or has been proved to be non-productive of oil  
31 and/or gas in substantial quantities, when for public use,  
32 the extent of the area to be acquired for such purpose to  
33 be determined by the court on the basis of reasonable need  
34 therefor. Nothing in this subsection shall be construed to  
35 interfere with the power of the state and its political sub-  
36 divisions to enact and enforce ordinances and regulations  
37 deemed necessary to protect the lives and property of  
38 citizens from the effects of explosions of oil or gas;

39 (d) For constructing, maintaining and operating, water  
40 plants and systems, including lines for transporting water  
41 by any corporate body politic, or private corporation, for  
42 supplying water to the inhabitants of any city, town,  
43 village or community, for public use, including lands for  
44 pump stations, reservoirs, cisterns, storage dams, and  
45 other means of storing, purifying and transporting water  
46 and the right to take and damage lands which may be  
47 flooded by the impounded waters, and to appropriate any  
48 spring, stream and the surrounding property necessary  
49 to protect, preserve and maintain the purity of any such  
50 spring, stream, reservoir, cistern and water impounded  
51 by means of any storage dam;



52 (e) For the purpose of constructing, maintaining and  
53 operating sewer systems, lines and sewage disposal  
54 plants, to collect, transport and dispose of sewage. When  
55 in the interest of the public welfare and the preservation  
56 of the public health, the construction of a sewer line to  
57 serve a single building or institution shall be deemed a  
58 public use, and, for such purpose, the right of eminent  
59 domain, if within a municipal corporation, may be exer-  
60 cised in the name of the municipal corporation, and if not  
61 within a municipal corporation, in the name of the county  
62 court of the county in which the property is located;

63 (f) For the reasonable use by an incorporated com-  
64 pany engaged in a public enterprise of which the state or  
65 any county or municipality is the sole or a part owner;

66 (g) For courthouses and municipal buildings, parks,  
67 public playgrounds, the location of public monuments,  
68 and all other public buildings;

69 (h) For cemeteries, and the extension and enlarge-  
70 ment of existing cemeteries: *Provided*, That no lands  
71 shall be taken for cemetery purposes which lie within  
72 four hundred feet of a dwelling house, unless to extend  
73 the boundaries of an existing cemetery, and then only in  
74 such manner that the limits of the existing cemetery shall  
75 not be extended nearer than four hundred feet of any  
76 dwelling house distant four hundred feet or more from  
77 such cemetery, or nearer than it was to any dwelling  
78 house which is within four hundred feet thereof;

79 (i) For public schools, public libraries, and public  
80 hospitals;

81 (j) For the construction and operation of booms (in-  
82 cluding approaches, landings and ways necessary for such  
83 objects), when for a public use;

84 (k) By the state of West Virginia for any and every  
85 other public use, object and purpose not herein specifically  
86 mentioned. By the United States of America for each  
87 and every legitimate public use, need and purpose of the  
88 government of the United States, within the purview, and  
89 subject to the provisions of chapter one of this code.

## CHAPTER 60

(Senate Bill No. 74—By Mr .Bean)

AN ACT to amend and reenact sections four and six, article one, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the condemnation of land for public use.

[Passed February 21, 1949; in effect from passage. Approved by the Governor.]

### Article 1. Right of Eminent Domain.

#### Section

4. Restrictions as to dwelling houses.
6. Quantity of land acquired.

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

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

Section 4. *Restrictions as to Dwelling Houses.*—No railroad company, or other company of internal improvement, in locating and constructing its lines, shall invade the dwelling house of any person, or any space within sixty feet thereof, without the consent of the owner, unless necessary so to do in passing through a narrow gorge, defile or narrow pass, or to avoid undesirable curves, angles, and grades, in the construction of its line, or to eliminate such curves, angles, and grades in any line heretofore constructed. This prohibition shall not apply to the territory within any municipal corporation, nor to the acquisition by condemnation of land for any purpose of the company other than right of ways for its main lines and transmission lines.

Sec. 6. *Quantity of Land Acquired.*—The land acquired by condemnation by any railroad company for its main depots, termini, buildings, machine shops, railroad yards and railroad facilities, and the land or interest therein so acquired by any company incorporated for a work of internal improvement along its line generally, or for any other public use authorized by section two of this

- 8 article, shall be limited to such quantity as is necessary  
9 for the purpose or purposes for which it is appropriated.
- 

## CHAPTER 61

(Senate Bill No. 89—By Mr. Mitchell and Mr. Love)

AN ACT to amend article one, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding a new section thereto to be numbered twenty-two, relating to the leasing of lands owned by the state for purpose of mining the coal thereon by strip mining methods.

[Passed March 9, 1949; in effect July 1, 1949. Approved by the Governor.]

### Article 1. Creation of Estates Generally.

22. Leasing of lands owned by the state for strip-mining coal thereon.

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

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

- Section 22.—*Leasing of Lands Owned by the State for Strip-Mining Coal Thereon.*—No land or interest in land owned by the state shall be leased, and no present lease shall be renewed by the state, nor the board of control, nor any other agency of the state, for the purpose of mining the coal therefrom by the method commonly known as strip mining, unless said lease or renewal shall have been first authorized by an act of the Legislature.
- 

## CHAPTER 62

(Senate Bill No. 198—By Mr. Van Camp)

AN ACT to amend chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, by adding

thereto a new article to be designated article five, relating to release of powers of appointment.

[Passed March 12, 1949; in effect from passage. Approved by the Governor.]

### **Article 5. Release of Powers of Appointment.**

#### **Section**

1. Release of general powers of appointment.
2. Method of effecting release of powers of appointment.
3. Release of other than general powers of appointment.
4. Validity of release of power of appointment heretofore made.
5. Other methods of release of power of appointment not affected.

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

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

#### *Section 1. Release of General Powers of Appointment.*

- 2 —Any general power, whether exercisable by will, by  
3 deed, by will or deed, or otherwise, to appoint property,  
4 whether real or personal or both, is releasable by the  
5 person or persons having such power, with or without  
6 consideration, wholly or partially. Any such power may  
7 be released with respect to the whole or any part of the  
8 property subject thereto; and any such power may also be  
9 released in such manner as to reduce, limit, or restrict the  
10 persons or objects, or classes of persons or objects, to or  
11 among any one or more of whom, but no others, the prop-  
12 erty subject to such power may be appointed by an ex-  
13 ercise thereof, as fully as the creator of such power himself  
14 could have so reduced, limited or restricted the same and  
15 with like effect as if he had.

#### *Sec. 2. Method of Effecting Release of Powers of Ap-*

- 2 *pointment.*—Any release mentioned in the preceding sec-  
3 tion may be effected by a written instrument signed and  
4 acknowledged as a deed by the person or persons having  
5 the general power to appoint mentioned in that section;  
6 and such instrument may be delivered by filing it for  
7 record in the office of the clerk of the county court of the  
8 county wherein the will, deed or other instrument creat-

9 ing such power is recorded. Such clerk shall record such  
10 instrument of release as a deed is recorded, index it, and  
11 note a reference to the record thereof on the margin of  
12 the record of the will, deed or other instrument creating  
13 such power.

Sec. 3. *Release of Other Than General Powers of Ap-  
2 pointment.*—Any other power than a general one, whether  
3 exercisable by will, by deed, by will or deed, or other-  
4 wise, to appoint property, real or personal or both, is re-  
5 leaseable to the extent that a release thereof would not be  
6 contrary to any manifest intent or purpose of the creator  
7 of such power expressly set forth in the will, deed or other  
8 instrument creating such power; and to the extent so re-  
9 leaseable it may be released in like manner as above pro-  
10 vided in this article for the release of a general power of  
11 appointment, and with like effect.

Sec. 4. *Validity of Release of Power of Appointment  
2 Heretofore Made.*—Any release of a general or other re-  
3 leaseable power of appointment heretofore made in con-  
4 formity with the provisions of the foregoing sections of  
5 this article shall be as valid, binding and effective as if  
6 hereafter so made.

Sec. 5. *Other Methods of Release of Power of Appoint-  
2 ment Not Affected.*—Nothing in this article contained  
3 shall affect the validity of any release of any power of  
4 appointment heretofore or hereafter lawfully effected in  
5 any other form or manner.

— 3 —

## CHAPTER 63

(Senate Bill No. 150—By Mr. McNeer)

AN ACT to amend article one-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended by adding thereto a new section to be designated section twelve, relating to license agreements between the conservation commission of West Virginia and the federal government.

[Passed February 28, 1949; in effect from passage. Approved by the Governor.]

### **Article 1-a. Executive Director.**

#### **Section**

12. Authority of commission to enter into license agreements with federal government.

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

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

Section 12. *Authority of Commission to Enter Into License Agreements with Federal Government.*—The state of West Virginia hereby assents to the provisions of Public Law No. 534, Seventy-eighth Congress, as amended by section four of the act of July twenty-four, one thousand nine hundred forty-six (Public Law No. 526, Seventy-ninth Congress) and the commission, through the executive director, is hereby authorized and empowered to enter into license or lease agreements with the federal government as provided for in Public Law No. 534, Seventy-eighth Congress, as amended by section four of the act of July twenty-four, one thousand nine hundred forty-six (Public Law No. 526, Seventy-ninth Congress).

## **CHAPTER 64**

(Com. Sub. for House Bill No. 181—Originating in the House Committee on Game and Fish)

AN ACT to amend and reenact sections one, two, two-a, two-b, two-c, two-d, two-e, two-f, two-g, two-h, three, three-a, three-b, three-c, four, four-a and twelve, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to necessity for hunting and fishing licenses, exemptions, payment of fees, defining classes of hunting, fishing, hunting and fishing licenses, prescribing prerequisites to the issuance thereof, fees therefor, place of license application, alien permits;

disclosures by applicants; size and form of license; contents; information by licensee; impounding license where improperly filled in; issuance of license; supplies furnished to county clerks; carrying and display of license; offenses; penalties; and to repeal section two-i, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

[Passed March 12, 1949; in effect January 1, 1950. Approved by the Governor.]

## **Article 7. Hunting and Fishing Licenses.**

### **Section**

1. Necessity for licensing.
2. Licenses conditioned on payment of fees; age exemption.
- 2-a. Class A; resident state-wide hunting license.
- 2-b. Class B; resident state-wide fishing license.
- 2-c. Class C, courtesy state-wide hunting and fishing license.
- 2-d. Class D; Ohio river hunting and fishing license.
- 2-e. Class E; non-resident state-wide hunting and fishing license.
- 2-f. Class F; non-resident state-wide fishing license.
- 2-g. Class G; non-resident single and family state park and state forest fishing license.
- 2-h. Class H; resident state-wide beaver trapping license.
- 2-i. Repealed.
3. Where license applications made; alien permits.
- 3-a. Statement of eligibility for license; necessity for; to whom made; false representation, penalty.
- 3-b. Size and form of license and tags; contests; information by licensee; and impounding license where not filled in.
- 3-c. Issuance of license by county clerks.
4. Supplies furnished county clerks.
- 4-a. Wearing of license tags.
12. Offenses; penalties.

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

That sections one, two, two-a, two-b, two-c, two-d, two-e, two-f, two-g, two-h, three, three-a, three-b, three-c, four, four-a and twelve, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and section two-i, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, all to read as follows:

- Section 1. *Necessity for Licensing.*—No person above  
2 the age of fifteen years, (except persons over sixty years  
3 of age mentioned in the following section) shall at any  
4 time hunt, pursue, trap for, kill, catch or chase for sport

5 any wild animals or wild birds, or fish for, kill, or catch  
6 any frogs, turtles or fish of any kind whatsoever in this  
7 state without first having secured a license and then only  
8 during the respective open seasons. A bona fide resident  
9 land owner of this state, or his resident children, or his  
10 bona fide resident tenants who are citizens of the United  
11 States may hunt, kill, pursue, catch, or chase for sport  
12 any wild animals or wild birds, or fish for, capture or kill  
13 any of the fish, frogs or turtles of this state on his own  
14 land during the open season therefor in accordance with  
15 regulations and provisions of law applying to such hunt-  
16 ing or fishing, without obtaining a license so to do, so long  
17 as said land shall not have been designated and made, in  
18 manner provided by law, a state game refuge or reserve.  
19 No person, who is a resident of this state, under the age  
20 of fifteen years, shall hunt upon the lands of another  
21 unless accompanied by a licensed adult. A resident or  
22 non-resident member of any club or organization or asso-  
23 ciation of persons owning or leasing a game or fish reserve  
24 in this state shall not hunt or fish therein without securing  
25 a license.

Sec. 2. *Licenses Conditioned on Payment of Fees; Age*  
2 *Exemption.*—Licenses to hunt and fish shall be of the  
3 kinds and classes and shall be conditioned upon the pay-  
4 ment of the fees set forth in this article. A resident of the  
5 state sixty years of age or over shall not be required to  
6 obtain a license to fish with hook and line in the waters  
7 of the state.

Sec. 2-a. *Class A; Resident State-wide Hunting License.*  
2 —A class A license shall be a state-wide hunting license  
3 and shall entitle the licensee to hunt in all counties of the  
4 state. It shall be issued only to citizens of the United  
5 States who are residents of this state. The fee therefor  
6 shall be two dollars: *Provided*, That in any case where a  
7 licensee purchases a class A and a class B license at the  
8 same time, the fee for a class A license shall be one dollar  
9 and fifty cents.

Sec. 2-b. *Class B; Resident State-wide Fishing License.*—  
2 A class B license shall be a state-wide fishing license and



3 shall entitle the licensee to fish in all counties of the state.  
4 It shall be issued only to citizens of the United States, and  
5 unnaturalized persons possessing the permit mentioned  
6 in section three of this article, who are residents of this  
7 state. The fee therefor shall be two dollars: *Provided,*  
8 That in any case where a licensee purchases a class A and  
9 a class B license at the same time the fee for a class B  
10 license shall be one dollar and fifty cents. For conven-  
11 ience, the commission may provide for the issuance, in  
12 those cases where both class A and class B licenses are  
13 issued to a single licensee at the same time, of both class  
14 A and class B licenses upon a single form, but regardless  
15 of such form, each shall be and remain a separate license.

Sec. 2-c. *Class C, Courtesy State-wide Hunting and Fish-*  
2 *ing License.*—A class C license shall be a courtesy hunting  
3 and fishing license and shall entitle the licensee to hunt  
4 and fish in all counties of this state. It shall be issued by  
5 the director upon application made to him and without  
6 fee to:

7 (1) Members and agents of the United States Biological  
8 Survey and Bureau of Fisheries;

9 (2) Members of state commissions of other states ex-  
10 tending similar courtesies;

11 (3) Diplomatic and consular representatives of foreign  
12 countries; and

13 (4) Persons engaged in scientific research.

14 Not more than fifty courtesy licenses shall be issued in  
15 one year.

Sec. 2-d. *Class D; Ohio River Hunting and Fishing Li-*  
2 *cense.*—A class D license shall be an Ohio river hunting  
3 and fishing license and shall entitle the licensee to hunt  
4 and fish in the Ohio river only. It shall be issued only to  
5 citizens of the United States who are residents of the state  
6 of Ohio. The fee shall be one dollar.

Sec. 2-e. *Class E; Non-Resident State-wide Hunting and*  
2 *Fishing License.*—A class E license shall be a non-resident  
3 hunting and fishing license and shall entitle the licensee  
4 to hunt and fish in all counties of the state. It shall be  
5 issued only to citizens of the United States who are not

6 resident of this state. The fee therefor shall be twenty-  
7 five dollars.

Sec. 2-f. *Class F; Non-Resident State-wide Fishing Li-*  
2 *cence.*—A class F license shall be a non-resident fishing  
3 license and shall entitle the licensee to fish in all counties  
4 of the state. It shall be issued only to citizens of the  
5 United States, and to unnaturalized persons possessing  
6 the permit required by section three of this article, who  
7 are not residents of this state. The fee therefor shall be  
8 ten dollars.

Sec. 2-g. *Class G; Non-resident Single and Family State*  
2 *Park and State Forest Fishing License.*—A class G license  
3 shall be a non-resident family fishing license and shall  
4 entitle the licensee and members of his family to fish  
5 within the territorial limits of state parks and state forests  
6 and in the waters of streams bounding same, for a distance  
7 of not to exceed one hundred yards from the exterior  
8 boundary of any state park or state forest, for a period  
9 not to exceed one week. It may be issued to any adult  
10 non-resident who is temporarily residing in any state park  
11 or forest as tenant or lessee of the state. The fee therefor  
12 shall be two dollars and fifty cents for the head of the  
13 family, plus fifty cents additional for each member of his  
14 family to whom the privileges of such license are ex-  
15 tended. Class G licenses may be issued in such manner  
16 and under such regulations as the commission may see fit  
17 to prescribe.

Sec. 2-h. *Class H; Resident State-Wide Beaver Trap-*  
2 *ping License.*—A class H license shall be a state-wide  
3 beaver trapping license and shall entitle the licensee to  
4 trap beaver only, in all counties of the state. It shall be  
5 issued only to a citizen of the United States who is a bona  
6 fide resident of West Virginia. This license shall become  
7 valid only when countersigned, in a space provided on  
8 face of license, by landowner, lessee, or person who has  
9 legal possession of land upon which the trapper is oper-  
10 ating. Setting beaver traps upon the lands of another  
11 person without obtaining permission and signature in  
12 space provided on license shall be considered an illegal

13 act. The licensee shall not be required to hold any other  
14 class of license to trap beaver; nor shall said license be  
15 required of any bona fide resident landowner or bona fide  
16 resident tenant, or a child of either under the age of fif-  
17 teen years in those cases where they may trap beavers  
18 upon lands belonging to such landowner, or in possession  
19 of such tenant. The fee therefor shall be two dollars.

Sec. 2-i. This section is hereby repealed.

Sec. 3. *Where License Applications Made; Alien Per-*  
2 *mits.*—Persons eligible for any class license shall make  
3 application therefor, either in person or by agent, in writ-  
4 ing or orally, as follows:

5 (i) For class A, B, E, F and H license, to any county clerk.

6 (ii) For class D license, to the county clerk of any  
7 county bordering the Ohio river.

8 (iii) For class C license, to the commission; and for class  
9 G license, to the commission, or its administrative em-  
10 ployees at state parks or state forests.

11 Aliens desiring to procure licenses shall first apply to  
12 the director for a permit to secure such license. If the  
13 director satisfies himself that the applicant is legally en-  
14 titled to such license, and will observe the laws of this  
15 state, and particularly the provisions of this chapter, he  
16 may issue the permit. Permits, once issued, shall remain  
17 in force until revoked. No issuing officer shall be required  
18 to issue or deliver any license unless the applicant informs  
19 him that the licensee is duly qualified and eligible to re-  
20 ceive the class of license applied for, and payment of the  
21 required fee is made to such officer.

Sec. 3-a. *Statement of Eligibility for License; Necessity*  
2 *For; To Whom Made; False Representation, Penalty.*—  
3 It shall be the duty of every person who makes application  
4 for or procures the issuance of any class of license to  
5 himself or another, to correctly inform the issuing officer  
6 that the licensee for whom application is made, is eligible,  
7 and fulfills the prerequisites of this article in respect of  
8 age, citizenship and residence which are necessary to en-  
9 title such person to have and hold the class of license  
10 applied for; and the possession of any class of license by

11 any licensee shall presume that such licensee, or his agent,  
12 duly informed the issuing officer that the licensee in ques-  
13 tion was eligible to have, hold and procure the class of  
14 license so issued. The procurement of a license by licensee,  
15 or another for him, in violation of the provisions hereof  
16 shall be unlawful, and punishable as hereinafter provided  
17 in this article. It shall not be necessary for the state to  
18 prove, in any proceeding for an offense hereunder, that  
19 false statements were or were not made, if it be estab-  
20 lished that the licensee possessed a class of license he was  
21 not entitled to possess, or the license procured by the  
22 offender for another was of a class the licensee named in  
23 the license was not entitled to possess.

Sec. 3-b. *Size and Form of License and Tags; Con-*  
2 *tests; Information by Licensee; and Impounding License*  
3 *Where Not Filled In.*—The size, content and form of  
4 licenses and tags shall be prescribed by the commission.  
5 The license shall contain spaces for information disclosing  
6 the age, citizenship and residence of the licensee, and his  
7 weight, height, color of hair, eyes, and complexion or  
8 skin, and any unusual physical characteristics, if any. The  
9 information required by this section shall be placed upon  
10 the license by the licensee promptly after delivery of the  
11 license to him; and in any event, prior to the time he shall  
12 hunt or fish in the fields, forests and streams of the state.  
13 Any conservation officer who finds a licensee whose license  
14 is either not filled in, or is improperly filled in, may re-  
15 quire the licensee to properly fill it in at that time and  
16 place; and, in event of the licensee's refusal so to do, the  
17 officer is hereby authorized to impound such license and  
18 the tags, if any, issued with it, and forward same to the  
19 commission, with a statement of the facts. The commis-  
20 sion in such case may cancel the license, or return it to  
21 the licensee as it sees fit. Nothing in this article contained  
22 shall subject such licensee to the criminal penalties which  
23 are otherwise provided for violations of this article, so  
24 long as the license in the possession of the licensee was  
25 of the proper class, but the licensee may be punished by  
26 loss of this license for his failure or refusal to fill it in  
27 properly; and, the provisions of section one of this article

28 shall apply to him, after his license has been impounded,  
29 until such time as he shall have procured a new license,  
30 or the license so impounded has been returned to him.

Sec. 3-c. *Issuance of License by County Clerks.*—The  
2 clerk of any county court to whom an application for  
3 license is made shall issue it, if, to the best of his knowl-  
4 edge and information the applicant has given him the  
5 information required by section three-a of this article and,  
6 in his opinion, is legally entitled to obtain the class of  
7 license applied for, and pays the proper fee.

8 A license shall be signed by the clerk of the county  
9 court, or his deputy, and shall bear a serial number. The  
10 clerk shall deliver to the purchaser any tag, badge, or  
11 other license contained which may be furnished by the  
12 commission and is required to be worn by licensee. The  
13 clerk shall keep an accurate record, in form prescribed  
14 by the director, of all licenses issued and of all moneys  
15 collected as license fees.

Sec. 4. *Supplies Furnished County Clerks.*—The direc-  
2 tor shall prepare and furnish to the clerks of the county  
3 courts of the state:

- 4 (i) License to be issued to applicants; and  
5 (ii) Tags to be worn by licensees, and badges or con-  
6 tainers for licenses, if any are required by the commis-  
7 sion.

Sec. 4-a. *Wearing of License Tags.*—The licensee shall,  
2 while exercising the privilege of the license, have his  
3 license upon his person at all times. Tags furnished by  
4 the commission, bearing the serial number of hunting  
5 license, shall be attached and displayed on the outer gar-  
6 ment. The license tag for the current year only shall be  
7 displayed.

Sec. 12. *Offenses; Penalties.*—Any person violating any  
2 provision of this article shall be guilty of a misdemeanor,  
3 and, upon conviction thereof, shall, for each offense, be  
4 fined not less than ten nor more than one hundred dollars,  
5 or confined in jail not more than ninety days, or both fined  
6 and imprisoned within the limitations aforesaid.

## CHAPTER 65

(House Bill No. 355—By Mr. Davis)

AN ACT authorizing and empowering the conservation commission of the state of West Virginia to lease a camp site within the Kanawha state forest, on the waters of Davis creek, Loudon district, Kanawha county, West Virginia, to the Boy Scouts of America, for the purpose of constructing, erecting and maintaining a boy scout camp therein.

[Passed March 9, 1949; in effect from passage. Approved by the Governor.]

### Section

1. Conservation commission authorized to lease a camp site in the Kanawha state forest to the Boy Scouts of America.

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

Section 1. *Conservation Commission Authorized to Lease a Camp Site in the Kanawha State Forest to the Boy Scouts of America.*—The conservation commission of West Virginia is hereby authorized and empowered to lease a camp site within the confines of the Kanawha state forest, situate in Loudon district, Kanawha county, West Virginia, to the Boy Scouts of America, for the purpose of constructing, erecting and maintaining a boy scout camp therein for the exclusive use of said Boy Scouts of America; and the said conservation commission of West Virginia is hereby authorized and empowered to enter into such lease agreement with the Boy Scouts of America under such terms and conditions as the commission shall deem proper. No such lease shall be for any period longer than ninety-nine years.

## CHAPTER 66

(Com. Sub. for House Bill No. 37—Originating in the House Committee on the Judiciary)

AN ACT to amend and reenact section two, article three, chapter six of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to the removal of officers.

[Passed March 10, 1949; in effect ninety days from passage. Approved by the Governor.]

### **Article 3. Deputy Officers and Conservators of the Peace.**

#### **Section**

#### **2. Removal of deputy.**

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

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

Section 2. *Removal of Deputy.*—Any deputy appointed pursuant to section one of this article, may, at any time, be removed from office by his principal, or by the court, or other tribunal in lieu thereof, by and with the consent of which he was appointed. *Provided, however,* That nothing herein contained, or elsewhere in the laws of this state provided, except the procedure for removal of officers set forth in section seven, article six, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, shall empower or be construed to authorize the removal, or revocation of appointment and confirmation of any deputy sheriff by any tribunal, officer or body whatsoever, except by the sheriff by whom he was appointed, unless good cause be shown for such removal, dismissal or revocation of appointment.

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## **CHAPTER 67**

**(House Bill No. 219—By Mr. Carroll)**

AN ACT to amend and reenact section four, article one, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the general duties of the insurance commissioner.

[Passed February 24, 1949; in effect ninety days from passage. Approved by the Governor.]

### **Article 1. General Powers and Duties of Insurance Commissioner.**

#### **Section**

#### **4. General duties of commissioner.**

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

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

Section 4. *General Duties of Commissioner.*—The commissioner shall see that all laws respecting insurance companies are faithfully executed; shall affix a seal of the state insurance department to all documents and papers required to be filed in other states by companies domiciled in this state, or to other documents and papers when an official seal of the department is required; shall furnish to each insurance company doing business in this state printed forms of the annual financial statements required by law; shall on or before the tenth day of each month pay into the state treasury all the fees which he may have received during the month previous; and may administer oaths in the discharge of his duties. He shall report to the governor changes which, in the opinion of the commissioner, should be made in the laws relating to insurance.

## **CHAPTER 68**

(House Bill No. 236—By Mr. Campbell, of Cabell, by request)

AN ACT to amend article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section to be designated section thirty-eight, relating to the imposition of a



tax upon annuity considerations received by life insurance companies.

[Passed March 12, 1949; in effect from passage. Approved by the Governor.]

## Article 2. General Provisions.

### Section

38. Tax upon annuity considerations.

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

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

Section 38. *Tax Upon Annuity Considerations.*—Every  
2 life insurance company licensed to transact business in  
3 this state shall make a return annually, on or before the  
4 first day of March, to the insurance commissioner, under  
5 the oath of its president or secretary, of the gross amount  
6 of annuity considerations collected and received by it  
7 during the previous calendar year on business done in this  
8 state; and upon receiving from the commissioner a cer-  
9 tificate of the acceptance of such return and of the amount  
10 of tax due thereon, such company shall pay such tax to the  
11 insurance commissioner annually on or before the first  
12 day of March. The annual tax which a licensed insurance  
13 company is required to pay to the state on such considera-  
14 tions shall be a sum equal to one per centum of the gross  
15 amount of annuity considerations received by it on the  
16 business written or renewed in this state, less annuity  
17 considerations returned and less termination allowances  
18 on group annuity contracts. All such taxes paid to the  
19 commissioner shall be paid by him into the state treasury  
20 for the benefit of the state fund.

21 The tax imposed by this act shall be first payable in  
22 the year one thousand nine hundred forty-nine, on the  
23 basis of taxable annuity considerations collected and  
24 received by insurance companies during the year one  
25 thousand nine hundred forty-eight.

## CHAPTER 69

(House Bill No. 339—By Mr. Trent, by request)

AN ACT to amend article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, to be designated section forty-eight, relating to the payment of commission under an assigned risk plan.

[Passed March 12, 1949; in effect July 1, 1949. Approved by the Governor.]

### Article 2. General Provisions.

#### Section

48. Payment of commission under an assigned risk plan.

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

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

#### Section 48. *Payment of Commission Under an Assigned*

2 *Risk Plan.*—An insurer participating in a plan for assign-  
3 ment of personal injury liability insurance or property  
4 damage liability insurance on owner's automobiles or op-  
5 erators, which plan has been approved by the insurance  
6 commissioner of this state, may pay a commission to a  
7 qualified agent who is licensed to act as agent for any  
8 insurer participating in such plan when such agent is  
9 designated by the insured as the producer of record under  
10 an automobile assigned risk plan pursuant to which a  
11 policy is issued under such plan.

## CHAPTER 70

(Com. Sub. for House Bill No. 234—Originating in the House Committee on Insurance)

AN ACT to repeal sections twenty, twenty-one, twenty-two, twenty-three, twenty-five and twenty-six, article three,

chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend said article by adding thereto twelve new sections to be numbered, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six, forty-seven and forty-eight, all relating to the investment of the capital, surplus, assets and other funds of life insurance companies organized under the laws of this state.

[Passed March 12, 1949; in effect from passage. Approved by the Governor.]

### Article 3. Life Insurance.

#### Section

37. Authorized investments.
38. General qualifications.
39. General limitation any one person.
40. Investments in securities.
41. Restriction on acquisition and holding of real property.
42. Foreign securities.
43. When restrictions not applicable.
44. Excessive commissions prohibited; interest of officers and directors.
45. Authorization of investments.
46. Record of investments.
47. When investments must comply.
48. Personal liability and penalty for improper loan or investment; inconsistent acts repealed.

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

That sections twenty, twenty-one, twenty-two, twenty-three, twenty-five and twenty-six, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that said article be amended by adding thereto twelve new sections to be numbered thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six, forty-seven and forty-eight, to read as follows:

- Section 37. *Authorized Investments.*—The capital, surplus, assets, and other funds of life insurers organized under the laws of this state shall be invested as provided in this article, and not otherwise.

- Sec. 38. *General Qualifications.*—No security or other investment shall be eligible for purchase or acquisition

3 unless it is interest bearing or interest accruing or divi-  
4 dend or income paying, is not then in default in any re-  
5 spect, and the insurer is entitled to receive for its ex-  
6 clusive account and benefit, the interest or income ac-  
7 cruing thereon; except real estate, as provided by sec-  
8 tion forty-one of this article. No security shall be eligible  
9 for purchase at a price above its market value.

Sec. 39. *General Limitation Any One Person.*—An in-  
2 surer shall not have at any time, except with the consent  
3 of the commissioner, any combination of investments  
4 in or loans upon the security of the obligations, property,  
5 and securities of any one person, institution, or municipal  
6 corporation aggregating an amount exceeding five per  
7 cent of the insurer's assets. This section shall not apply  
8 to investments in or loans upon the security of general  
9 obligations of or obligations fully guaranteed by the  
10 government of the United States or of any state or terri-  
11 tory of the United States, or the District of Columbia, or  
12 to political subdivisions of the state of West Virginia,  
13 nor to investments in foreign securities pursuant to para-  
14 graph (a) of section forty-two nor to policy loans made  
15 pursuant to section forty-five of this article.

Sec. 40. *Investments in Securities.*—(a) Any domestic  
2 insurer may invest in the following securities:  
3 (1) Bonds or securities which are the direct obligation  
4 of or which are secured or guaranteed in whole or in  
5 part as to principal and interest by the United States,  
6 any state or territory of the United States, or the District  
7 of Columbia, where there exists the power to levy taxes  
8 for the prompt payment of the principal and interest of  
9 such bonds or evidences of indebtedness, and, in bonds  
10 issued by the federal land banks.

11 (2) Bonds or evidences of indebtedness which are di-  
12 rect general obligations of any county, district, city, town,  
13 village, school district, park district, or other political  
14 subdivision of this state or any other state or territory  
15 of the United States, or the District of Columbia, or of  
16 the Dominion of Canada, which shall not be in default  
17 in the payment of any of its general obligation bonds,  
18 either principal or interest, at the date of such invest-

ment; where they are payable from ad valorem taxes levied on all the taxable property located therein and the total indebtedness after deducting sinking funds and all debts incurred for self-sustaining public works does not exceed ten percentum of the actual value of all taxable property therein on the basis of which the last assessment was made before the date of such investment.

(3) Obligations issued or guaranteed by the international bank for reconstruction and development.

(4) Entire first mortgages on improved unencumbered real estate or the entire issue of bonds secured thereby located within any of the states of the United States or the District of Columbia worth at least fifty percentum more than the amount loaned thereon, based on sound appraisal by a competent appraiser and duly certified by him, provided that the investment in any one mortgage or any one issue of bonds or any one contract for deed does not exceed twenty thousand dollars or two percentum of the company's assets, whichever is the greater.

"Improved real estate", as used in this section, means all farm land which has been reclaimed and is used for the purpose of husbandry, whether for tillage or pasture, and all real property on which permanent buildings suitable for residence or commercial use are situated.

Real property shall not be deemed to be encumbered within the meaning of this section by reason of the existence of instruments reserving or excepting mineral rights and interests, rights-of-way, sewer rights and rights in walls or easements, nor by reason of building restrictions or other restrictive covenants, nor by reason of the fact that it is subject to lease under which rents or profits are reserved to the owners: *Provided*, That the security for such investment is a full and unrestricted first lien upon such real property and that there is no condition nor right of re-entry or forfeiture under which such investments can be cut off, subordinated or otherwise disturbed.

Notwithstanding the restrictions herein set forth any domestic insurer may invest (1) in bonds or notes

60 secured by mortgage or trust deed insured by the federal  
61 housing administration or in debentures issued by it un-  
62 der the terms of an act of Congress of the United States  
63 entitled the "National Housing Act", as heretofore or  
64 hereafter amended and (2) in securities issued by na-  
65 tional mortgage associations established by or under the  
66 authority of the National Housing Act, and (3) in bonds  
67 or notes secured by mortgage or trust deed guaranteed  
68 as to principal by the administrator of veterans' affairs  
69 pursuant to the provisions of Title III of Act of Congress  
70 of the United States as of June twenty-two, one thousand  
71 nine hundred forty-four, entitled the "Servicemen's Re-  
72 Adjustment Act of one thousand nine hundred forty-  
73 four", as heretofore or hereafter amended.

74 Notwithstanding the restrictions herein set forth the  
75 amount of any first mortgage investment as limited by  
76 the first paragraph of this subsection (4) may be ex-  
77 ceeded if and to the extent that such excess shall be  
78 guaranteed by the administrator of veterans' affairs pur-  
79 suant to the provisions of Title III of an Act of Congress  
80 of the United States of June twenty-two, one thousand  
81 nine hundred forty-four, entitled the "Servicemen's Re-  
82 Adjustment Act of one thousand nine hundred forty-  
83 four", as heretofore or hereafter amended.

84 No such domestic insurer shall in any manner, either  
85 directly or indirectly, by means of corporations, holding  
86 companies, trustees or otherwise, invest in real estate  
87 securities junior to first mortgages unless the first mort-  
88 gage in its entirety is owned by the insurer.

89 (5) Subject to the limit set forth in subsection (b),  
90 bonds, or evidence of indebtedness issued or guaranteed  
91 by any railroad corporation or corporations (other than  
92 those organized and chartered for the sole purpose of  
93 holding stock of other corporations) created under the  
94 laws of the United States or any of the states of the  
95 United States or the District of Columbia or any certifi-  
96 cates of any equipment trust created on behalf of any  
97 such railroad corporation.

98 (6) Subject to the limit set forth in subsection (b),  
99 bonds or evidence of indebtedness of any solvent public  
100 utility corporation or corporations (other than those

101 organized and chartered for the sole purpose of holding  
102 the stock of other corporations) created under the laws  
103 of the United States or of any of the states of the United  
104 States or the District of Columbia.

105 (7) Subject to the limit set forth in subsection (b),  
106 bonds or evidences of indebtedness issued by any solvent  
107 corporation or corporations (other than those mentioned  
108 in paragraphs (5) and (6) and other than corporations  
109 organized and chartered for the sole purpose of holding  
110 the stock of other corporations) created under the laws  
111 of the United States or of any of the states of the United  
112 states or the District of Columbia.

113 (8) Preferred or guaranteed stock issued or guar-  
114 anteed by any solvent corporation or corporations cre-  
115 ated under laws of the United States or any of the states  
116 of the United States or the District of Columbia: *Pro-*  
117 *vided*, That such stock are not in default as to payment of  
118 any current dividends.

119 Such domestic insurer shall not invest in or loan any  
120 of its funds on its own stocks.

121 (9) Loans upon the pledge of bonds, mortgages, se-  
122 curities, stock or evidence of indebtedness acceptable as  
123 investment for the lending insurer under the terms of  
124 this article and subject to the same limits as to each  
125 security as is provided herein for investment, if the face  
126 or current market value whichever is less of such mort-  
127 gages is more than the amount loaned thereon, and the  
128 current market value of such bonds, securities, preferred  
129 or guaranteed stock or evidences of indebtedness is at  
130 least twenty percentum more than the amount loaned  
131 thereon. This limitation shall not apply to loans on the  
132 pledge of bonds or securities of or guaranteed by the  
133 United States.

134 (10) Shares of insured state chartered building and  
135 loan associations and federal savings and loan associa-  
136 tions, if such shares are insured by the federal savings  
137 and loan insurance corporation as specifically set forth  
138 under the terms of Title IV of an Act of the Congress  
139 of the United States entitled the "National Housing  
140 Act".

141 (11) In bank certificates of deposit and bankers' ac-

142 ceptances, and other bills of exchange of the kind and  
143 maturities made eligible by law for purchase in the open  
144 market by federal reserve banks.

145 (b) Any domestic life insurer, in addition to the in-  
146 vestments permitted by subsection (a), may invest in  
147 the shares of capital stock and securities of any solvent  
148 corporation created under the laws of the United States,  
149 or of any of the states of the United States, or the Dis-  
150 trict of Columbia: *Provided*, That such corporation has  
151 earned during any three of the five fiscal years next  
152 preceding the date of the investment, a sum applicable  
153 to dividends equal in the aggregate to not less than twelve  
154 percentum of the par value (or, in the case of shares hav-  
155 ing no par value, the issue value) of its outstanding  
156 shares. Such insurer shall not invest in more than five  
157 per centum of the total number of shares of any one such  
158 corporation, or more than two per centum of its assets  
159 in the shares (or securities) of any one such corporation,  
160 nor shall it invest in shares and securities permitted by  
161 this subsection, more than the amount of its capital and  
162 surplus in the case of a stock company, or surplus in the  
163 case of a company other than stock.

Sec. 41. *Restriction on Acquisition and Holding of Real*

2 *Property*.—(a) No domestic life insurer may acquire or  
3 hold real property except as follows:

4 (1) Such as shall be requisite for the convenient ac-  
5 commodation of the transaction of its own business; the  
6 amount invested in such real property shall not exceed  
7 five percentum of the investing insurer's assets but the  
8 commissioner may grant permission to the insurer to in-  
9 vest in real property for such purpose, in such increased  
10 amount as he may deem proper on the showing made if,  
11 upon a hearing held before him, he shall find that the  
12 amount represented by such percentage of its assets is  
13 insufficient to provide convenient accommodations for the  
14 insurer's business.

15 (2) Such as shall have been mortgaged to it in good  
16 faith by way of security for loans previously contracted  
17 or for monies due;

18 (3) Such as shall have been conveyed to it in satis-



19 faction of debts previously contracted in course of its  
20 dealings;

21 (4) Such as shall have been purchased at sales on judg-  
22 ments, decrees or mortgages obtained or made for such  
23 debts; and

24 (5) Such unencumbered real property as shall have  
25 been acquired in whole or in part, in exchange for real  
26 property of approximately the same value theretofore  
27 legally acquired and held by it;

28 (6) Such as shall be held as security for contracts for  
29 deeds;

30 (7) (A) Such as may be acquired for the purpose of  
31 leasing the same to any person, firm, or corporation, or  
32 real estate already leased under the following conditions;

33 a. (1) Where there has already been erected on said  
34 property a building or other improvements satisfactory  
35 to the purchaser, or (2) where the lessee shall at its own  
36 cost erect thereon, free of liens, a building or other im-  
37 provements satisfactory to the lessor, or (3) where the  
38 lessor under the terms and conditions of a lease executed  
39 and entered into simultaneously with the purchase of  
40 the property agrees to erect a building or other improve-  
41 ments on said property.

42 b. That the said improvements shall remain on the  
43 said property during the period of the lease, and in cases  
44 where the said improvements are put upon said property  
45 at the cost of the lessee the said improvements at the  
46 termination of the lease shall vest, free of liens, in the  
47 owner of the real estate.

48 c. That during the term of the lease the lessee shall  
49 keep and maintain the said improvements in good repair.  
50 Real estate acquired pursuant to the provisions of this  
51 part (A) shall not be valued in an amount exceeding the  
52 amount actually invested reduced each year by equal de-  
53 crements sufficient to write off at least seventy-five per  
54 cent of the investment at the normal termination of the  
55 lease or at the end of thirty years should the term of the  
56 lease be for a longer period. The total investments of  
57 any company under this part (A) shall not exceed five

58 per cent of its assets, nor more than the sum of its capital  
59 and surplus, whichever is less.

60 (B) Subject to approval of the commissioner, real  
61 estate for recreation, hospitalization, convalescence and  
62 retirement purposes of its employees. Such investment  
63 shall not exceed five per cent of the company's surplus.

64 (C) No investment shall be made by any company  
65 pursuant to this paragraph (7) which will cause such  
66 company's investment in all real property owned or held  
67 by it directly or indirectly to exceed ten per cent of its  
68 assets.

69 (b) All real property acquired for purposes, or in the  
70 manner, specified in paragraphs other than paragraphs  
71 (1), (6) and (7) of subsection (a) of this section may  
72 be held for a period of five years after the insurer shall  
73 have acquired title to the same and thereafter until the  
74 date specified in an order issued by the commissioner  
75 directing the insurer to dispose of the same. The date  
76 specified in such order shall be not less than six months  
77 from the date of the service of the said order upon the  
78 insurer. No such order shall be issued without a hearing  
79 and a determination by the commissioner that the inter-  
80 ests of the insurer will not suffer materially by the sale of  
81 the same within the period to be specified.

Sec. 42. *Foreign Securities.*—(a) An insurer authorized  
2 to transact insurance in a foreign country may invest any  
3 of its funds, in aggregate amount not exceeding by more  
4 than five per cent, its deposit and reserve obligations in-  
5 curred in such country, in securities of or in such country  
6 possessing characteristics and of a quality similar to those  
7 required pursuant to this chapter for investments in the  
8 United States.

9 (b) An insurer may invest any of its funds, in an aggre-  
10 gate amount not exceeding five per cent of its assets, in  
11 addition to any amount permitted pursuant to paragraph  
12 (a) of this section, in obligations of the governments of  
13 Canadian provinces or municipalities, and in obligations  
14 of Canadian corporations which are otherwise of equal  
15 quality to like United States public or corporate securities  
16 as prescribed in this act.

Sec. 43. *When Restrictions not Applicable.*—(a) The  
2 restrictions of sections forty and forty-one shall not apply  
3 to securities or other assets acquired through merger or  
4 consolidation with any other insurer or through a rein-  
5 surance agreement, if such assets when originally ac-  
6 quired constituted legal investments for the merger, con-  
7 solidated, or ceding insurer which acquired them, nor  
8 shall provisions apply to securities, obligations or other  
9 assets accepted incident to the adjustment or realization  
10 of any debt or investment when deemed by the board of  
11 directors or investment committee to be in the best in-  
12 terests of the insurer, but subject to the provisions of sub-  
13 section (b) all such securities, obligations or other assets  
14 so acquired or accepted after the effective date of this  
15 act which are not in accordance with the provisions of  
16 this chapter shall be disposed of not later than five years  
17 after the date of such acquisition or acceptance, or if ac-  
18 quired prior to the effective date of this act, not later  
19 than five years after such effective date.

20 (b) The commissioner upon application by the insurer  
21 may extend the time for the disposition of such securities,  
22 obligations or other assets for such period or periods as  
23 he may deem proper on the showing made, if he is satis-  
24 fied that such insurer will suffer materially by the forced  
25 sale thereof; and the commissioner shall grant a hearing  
26 to the insurer upon request.

Sec. 44. *Excessive Commissions Prohibited; Interest of*  
2 *Officers and Directors.*—No domestic insurer shall pay  
3 any commission or brokerage for the purchase or sale of  
4 property in excess of that usual and customary at the  
5 time and in the locality where such purchases or sales  
6 are made. No officer or director of a life insurance com-  
7 pany shall receive any money or valuable thing for ne-  
8 gotiating or recommending any loan or investment from  
9 such company, or for selling or aiding in the sale of stocks,  
10 securities or property to or by such company.

Sec. 45. *Authorization of Investments.*—No investment,  
2 loan, sale or exchange thereof shall, except as to the policy  
3 loans of a life insurer, be made by any domestic insurer

4 unless authorized or approved by its board of directors  
5 or by a committee thereof charged by the board of direc-  
6 tors or by the by-laws with the duty of making such in-  
7 vestments, loan, sale or exchange. The minutes of any  
8 such committee shall be recorded and reports thereof shall  
9 be submitted to the board of directors for approval or  
10 disapproval.

Sec. 46. *Record of Investments.*—As to each investment  
2 or loan of the funds of a domestic life insurer a written  
3 authorization thereof in permanent form shall be made,  
4 and signed by the officer or chairman of the committee  
5 authorizing the investment or loan.

Sec. 47. *When Investments Must Comply.*—The invest-  
2 ments in securities and real estate of all domestic insurers  
3 shall be made to conform to the requirements of this act  
4 by not later than five years after the effective date of  
5 this act, but the commissioner may, on application by  
6 the insurer, extend the time for such conformance for  
7 such period or periods as he may deem proper on the  
8 showing made, if he is satisfied that such insurer will  
9 suffer materially by the forced sale of any securities or  
10 property not conforming; and the commissioner shall  
11 grant a hearing to the insurer upon request: *Provided,*  
12 That any investments in common stocks lawfully made  
13 prior to the effective date of this act may be retained by  
14 such insurers, any provisions of this act to the contrary  
15 notwithstanding.

Sec. 48. *Personal Liability and Penalty for Improper*  
2 *Loan or Investment; Inconsistent Acts Repealed.*—Every  
3 officer or director of a life insurance company knowingly  
4 consenting to a loan or investment, in willful violation  
5 of any of the provisions of sections thirty-seven, thirty-  
6 eight, thirty-nine, forty, forty-one, forty-two, forty-three,  
7 forty-four, forty-five or forty-six of this article shall be  
8 personally liable to the company for any loss which may  
9 be sustained by such loan or investment, to be recovered  
10 in an action to be brought by the insurance commissioner  
11 on the complaint of any policyholder or stockholder in

12 the company suffering thereby, and in addition thereto  
13 shall be guilty of a misdemeanor, and, upon conviction,  
14 punished by a fine of not more than one thousand dollars  
15 and imprisoned not more than one year.

16 All acts and parts of acts inconsistent with the pro-  
17 visions of this act are hereby repealed.

## CHAPTER 71

(House Bill No. 218—By Mr. Trent)

AN ACT to amend and reenact section one, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the scope of fire insurance.

[Passed February 24, 1949: in effect ninety days from passage. Approved by the Governor.]

### Article 4. Fire and Marine Insurance.

#### Section

1. Scope of fire insurance.

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

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

Section 1. *Scope of Fire Insurance.*—Insurance companies authorized under the laws of this state having power to insure against loss by fire may make insurance (a) against loss or damage to dwelling houses, stores and all kinds of buildings and household furniture, goods, merchandise and chattels of every description, and all other property by fire, lightning, windstorm, tornado, cyclone, earthquake, hail, frost or snow, weather or climatic conditions, including excess or deficiency of moisture, flood, rain or drought, rising of the waters of the ocean or its tributaries and rivers, bombardment, invasion, insurrection, riot, strike, civil war or commotion, military or

13 usurped power, and by explosion whether fire ensues or  
14 not;

15 (b) Against loss or damage by insects or disease to farm  
16 crops or products and loss of rental value of land used  
17 in producing such crops or products;

18 (c) Against loss or damage by water or other fluid to  
19 any goods or premises arising from the breakage or leak-  
20 age of sprinklers, pumps or other apparatus erected for  
21 extinguishing fires, or of other conduits or containers, or  
22 by water entering through leaks or openings in buildings  
23 and of water pipes, and against accidental injury to such  
24 sprinklers, pumps, apparatus, conduits, containers or  
25 water pipes;

26 (d) Against loss or damage upon vessels, boats, car-  
27 goes, goods, merchandise, freight and other property by all  
28 or any of the risks of lake, river, canal and inland naviga-  
29 tion and transportation;

30 (e) Against loss or damage upon automobiles and all  
31 types of motor vehicles (including any other vehicles such  
32 as trailers used in connection with motor vehicles), and  
33 airplanes, seaplanes, dirigibles, or other aircraft, whether  
34 stationary or being operated under their own power, which  
35 shall include all or any of the hazards of fire, explosion,  
36 transportation, collision, loss by legal liability for damage  
37 to property or to person, loss of use, as well as include  
38 comprehensive coverage of risks of all types, resulting  
39 from the ownership, maintenance, or use of automobiles  
40 and all types of motor vehicles (including any other ve-  
41 hicles such as trailers used in connection with motor ve-  
42 hicles). airplanes, seaplanes, dirigibles, or other aircraft;

43 (f) Against loss by burglary or theft, vandalism or ma-  
44 licious mischief, or the wrongful conversion, disposal or  
45 concealment of automobiles and all types of motor ve-  
46 hicles (including any other vehicles such as trailers used  
47 in connection with motor vehicles), whether held under  
48 conditional sale contract or subject to chattel mortgages.

49 Such companies may insure against any one or more  
50 of such hazards, and shall have the right to effect reinsur-  
51 ance of any risks taken by them in companies authorized  
52 and admitted to do business in this state or approved by  
53 the insurance commissioner, but the subject of the insur-

54 ance and the risks, hazard or peril insured against shall  
55 be expressly set forth in the policy of insurance. This  
56 section shall not apply to insurance against loss caused by  
57 breach of trust. The insurance commissioner may, for  
58 good cause shown or on application of the company, limit  
59 the license of a company to make insurance to any one or  
60 more of the perils or coverages, including reinsurance,  
61 authorized herein.

## CHAPTER 72

(House Bill No. 347—By Mr. Trent, by request)

AN ACT to amend and reenact section seven, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fire and marine insurance.

[Passed March 12, 1949; in effect from passage. Approved by the Governor.]

### Article 4. Fire and Marine Insurance.

#### Section

7. Form of fire policies.

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

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

- Section 7. *Form of Fire Policies.*—(a) The printed form  
2 of a policy of fire insurance, as set forth in subsection (f)  
3 shall be known and designated as the standard fire insurance policy of the state of West Virginia.  
4  
5 (b) No policy or contract of fire insurance shall be  
6 made, issued or delivered by any insurer or by any agent  
7 or representative thereof, on any property in this state,  
8 unless it shall conform as to all provisions, stipulations,  
9 agreements and conditions, with such form of policy:  
10 *Provided, however,* That any company organized under  
11 special charter provisions may so indicate upon its policy,  
12 and may add a statement of the plan under which it operates in this state.  
13

14 There shall be printed at the head of said policy the  
15 name of the insurer or insurers issuing the policy; the  
16 location of the home office thereof; a statement whether  
17 said insurer or insurers are stock or mutual corporations;  
18 and there may be added thereto such device or devices  
19 as the insurer or insurers issuing said policy shall desire.  
20 The standard fire insurance policy provided for herein  
21 need not be used for effective reinsurance between in-  
22 surers.

23 If the policy is issued by a mutual insurer having spe-  
24 cial regulations with respect to the payment by the policy-  
25 holder of assessments, such regulations shall be printed  
26 upon the policy, and any such insurer may print upon the  
27 policy such regulations as may be appropriate to or re-  
28 quired by its form of organization.

29 (c) Binders or other contracts for temporary insur-  
30 ance may be made, orally or in writing, for a period which  
31 shall not exceed sixty days, and shall be deemed to include  
32 all the terms of such standard fire insurance policy and all  
33 such applicable endorsements, approved by the insurance  
34 commissioner, as may be designated in such contract of  
35 temporary insurance; except that the cancellation clause  
36 of such standard fire insurance policy, and the clause  
37 thereof specifying the hour of the day at which the  
38 insurance shall commence, may be superseded by the ex-  
39 press terms of such contract of temporary insurance.  
40 Earned premiums for binders or other contracts for tem-  
41 porary insurance shall be computed and paid for at rates  
42 approved by the insurance commissioner.

43 (d) Two or more insurers authorized to do in this state  
44 the business of fire insurance, may, with the approval of  
45 the insurance commissioner, issue a combination standard  
46 form of fire insurance policy which shall contain the fol-  
47 lowing provisions:

48 (1) A provision substantially to the effect that the in-  
49 surers executing such policy shall be severally liable for  
50 the full amount of any loss or damage, according to the  
51 terms of the policy, or for specified percentages or amounts  
52 thereof, aggregating the full amount of such insurance  
53 under such policy;



54 (2) A provision substantially to the effect that service  
55 of process, or of any notice or proof of loss required by  
56 such policy, upon any of the insurers executing such  
57 policy, shall be deemed to be service upon all such in-  
58 surers.

59 (e) Appropriate forms of supplemental contract or con-  
60 tracts or extended coverage endorsements whereby the  
61 interest in the property described in such policy shall be  
62 insured against one or more of the perils which the in-  
63 surer is empowered to assume, in addition to the perils  
64 covered by said standard fire insurance policy, may be  
65 approved by the insurance commissioner, and their use  
66 in connection with a standard fire insurance policy may  
67 be authorized by him. The first page of the policy may  
68 in form approved by the insurance commissioner be re-  
69 arranged to provide space for the listing of amounts of  
70 insurance, rates and premiums for the basic coverages  
71 insured under the standard form of policy and for addi-  
72 tional coverages or perils insured under endorsements at-  
73 tached, and such other data as may be conveniently in-  
74 cluded for duplication on daily reports for office records.

75 (f) The form of the standard fire insurance policy of  
76 the state of West Virginia (with the right to number the  
77 lines, if desired, in the provisions and stipulations on page  
78 two of the form and to substitute for the word "company"  
79 a more accurate descriptive form for the type of insurer)  
80 shall be as follows:

81 No.

82 (Space for insertion of name of company or companies  
83 issuing the policy and other matter permitted to be stated  
84 at the head of the policy.)

85 (Space for listing amounts of insurance, rates and  
86 premiums for the basic coverages insured under the  
87 standard form of policy and for additional coverages or  
88 perils insured under endorsements attached.)

89 In consideration of the provisions and stipulations here-  
90 in or added hereto and of ..... Dollars  
91 Premium this company, for the term of ..... (from  
92 the ..... day of ....., 19..... to the .....  
93 day of ....., 19.....) at noon, Standard

94 Time, at location of property involved, to an amount not  
95 exceeding ..... Dollars, does  
96 insure ..... and legal  
97 representatives, to the extent of the actual cash value of  
98 the property at the time of loss, but not exceeding the  
99 amount which it would cost to repair or replace the prop-  
100 erty with material of like kind and quality within a rea-  
101 sonable time after such loss, without allowance for any  
102 increased cost of repair or reconstruction by reason of any  
103 ordinance or law regulating construction or repair, and  
104 without compensation for loss resulting from interruption  
105 of business or manufacture, nor in any event for more  
106 than the interest of the insured, against all DIRECT LOSS  
107 BY FIRE, LIGHTNING AND BY REMOVAL FROM  
108 PREMISES ENDANGERED BY THE PERILS INSURED  
109 AGAINST IN THIS POLICY, EXCEPT AS HEREIN-  
110 AFTER PROVIDED, to the property described herein-  
111 after while located or contained as described in this policy,  
112 or pro rata for five days at each proper place to which  
113 any of the property shall necessarily be removed for pre-  
114 servation from elsewhere.

115 Assignment of this policy shall not be valid except with  
116 the written consent of this Company.

117 This policy is made and accepted subject to the forego-  
118 ing provisions and stipulations and those hereinafter  
119 stated, which are hereby made a part of this policy, to-  
120 gether with such other provisions, stipulations and agree-  
121 ments as may be added hereto, as provided in this policy.

122 IN WITNESS WHEREOF, this Company has executed  
123 and attested these presents; but this policy shall not be  
124 valid unless countersigned by the duly authorized  
125 Agent of this Company at

126 .....

127 .....

128 .....

President.

129 .....

Secretary.

130 .....

Countersigned this ..... day of ....., 19\_\_

131 .....

132 .....

Agent.

133     *Concealment, fraud.* This entire policy shall be void if,  
134 whether before or after a loss, the insured has wilfully  
135 concealed or misrepresented any material fact or circum-  
136 stance concerning this insurance or the subject thereof,  
137 or the interest of the insured therein, or in case of any  
138 fraud or false swearing by the insured relating thereto.

139     *Uninsurable and excepted property.* This policy shall  
140 not cover accounts, bills, currency, deeds, evidences of  
141 debt, money or securities; nor, unless specifically named  
142 hereon in writing, bullion or manuscripts.

143     *Perils not included.* This Company shall not be liable  
144 for loss by fire or other perils insured against in this  
145 policy, caused, directly or indirectly, by: (a) enemy at-  
146 tack by armed forces, including action taken by military,  
147 naval or air forces in resisting an actual or an immediately  
148 impending enemy attack; (b) invasion; (c) insurrection;  
149 (d) rebellion; (e) revolution; (f) civil war; (g) usurped  
150 power; (h) order of any civil authority except acts of  
151 destruction at the time of and for the purpose of prevent-  
152 ing the spread of fire, provided that such fire did not  
153 originate from any of the perils excluded by this policy;  
154 (i) neglect of the insured to use all reasonable means to  
155 save and preserve the property at and after a loss, or  
156 when the property is endangered by fire in neighboring  
157 premises; (j) nor shall this Company be liable for loss by  
158 theft.

159     *Other Insurance.* Other insurance may be prohibited  
160 or the amount of insurance may be limited by endorse-  
161 ment attached hereto.

162     *Conditions suspending or restricting insurance.* Unless  
163 otherwise provided in writing added hereto this Company  
164 shall not be liable for loss occurring (a) while the hazard  
165 is increased by any means within the control or knowl-  
166 edge of the insured; or (b) while a described building,  
167 whether intended for occupancy by owner or tenant, is  
168 vacant or unoccupied beyond a period of sixty consecu-  
169 tive days; or (c) as a result of explosion or riot, unless  
170 fire ensue, and in that event for loss by fire only.

171     *Other perils or subjects.* Any other peril to be insured  
172 against or subject of insurance to be covered in this policy

173 shall be by endorsement in writing hereon or added  
174 hereto.

175 *Added provisions.* The extent of the application of in-  
176 surance under this policy and of the contribution to be  
177 made by this Company in case of loss, and any other  
178 provision or agreement not inconsistent with the provi-  
179 sions of this policy, may be provided for in writing added  
180 hereto, but no provision may be waived except such as by  
181 the terms of this policy is subject to change.

182 *Waiver provisions.* No permission affecting this insur-  
183 ance shall exist, or waiver of any provisions be valid,  
184 unless granted herein or expressed in writing added here-  
185 to. No provision, stipulation or forfeiture shall be held  
186 to be waived by any requirement or proceeding on the  
187 part of this Company relating to appraisal or to any ex-  
188 amination provided for herein.

189 *Cancellation of policy.* This policy shall be cancelled  
190 at any time at the request of the insured, in which case  
191 this Company shall, upon demand and surrender of this  
192 policy, refund the excess of paid premium above the cus-  
193 tomary short rates for the expired time. This policy may  
194 be cancelled at any time by this Company by giving to  
195 the insured a five days' written notice of cancellation with  
196 or without tender of the excess of paid premium above  
197 the pro rata premium for the expired time, which excess,  
198 if not tendered, shall be refunded on demand. Notice of  
199 cancellation shall state that said excess premium (if not  
200 tendered) will be refunded on demand.

201 *Mortgagee interests and obligations.* If loss hereunder  
202 is made payable, in whole or in part, to a designated  
203 mortgagee not named herein as the insured, such interest  
204 in this policy may be cancelled by giving to such mor-  
205 tagee a ten days' written notice of cancellation.

206 If the insured fails to render proof of loss such mortga-  
207 gee, upon notice, shall render proof of loss in the form  
208 herein specified within sixty days thereafter and shall  
209 be subject to the provisions hereof relating to appraisal  
210 and time of payment and of bringing suit. If this Com-  
211 pany shall claim that no liability existed as to the mort-  
212 gator or owner, it shall, to the extent of payment of loss

213 to the mortgagee, be subrogated to all the mortgagee's  
214 rights of recovery, but without impairing mortgagee's  
215 right to sue; or it may pay off the mortgage debt and  
216 require an assignment thereof and of the mortgage. Other  
217 provisions relating to the interests and obligations of such  
218 mortgagee may be added hereto by agreement in writing.

219 *Pro rata liability.* This Company shall not be liable for  
220 a greater proportion of any loss than the amount hereby  
221 insured shall bear to the whole insurance covering the  
222 property against the peril involved, whether collectible or  
223 not.

224 *Requirements in case loss occurs.* The insured shall  
225 give immediate written notice to this Company of any  
226 loss, protect the property from further damage, forthwith  
227 separate the damaged and undamaged personal property,  
228 put it in the best possible order, furnish a complete in-  
229 ventory of the destroyed, damaged and undamaged prop-  
230 erty, showing in detail quantities, costs, actual cash value  
231 and amount of loss claimed; and within sixty days after  
232 the loss, unless such time is extended in writing by this  
233 Company, the insured shall render to this Company a  
234 proof of loss, signed and sworn to by the insured, stating  
235 the knowledge and belief of the insured as to the follow-  
236 ing: the time and origin of the loss, the interest of the  
237 insured and of all others in the property, the actual cash  
238 value of each item thereof and the amount of loss thereto,  
239 all encumbrances thereon, all other contracts of insur-  
240 ance, whether valid or not, covering any of said property,  
241 any changes in the title, use, occupation, location, posses-  
242 sion or exposures of said property since the issuing of this  
243 policy, by whom and for what purpose any building here-  
244 in described and the several parts thereof were occupied  
245 at the time of loss and whether or not it then stood on  
246 leased ground, and shall furnish a copy of all the descrip-  
247 tions and schedules in all policies and, if required; verified  
248 plans and specifications of any building, fixtures or ma-  
249 chinery destroyed or damaged. The insured, as often as  
250 may be reasonably required, shall exhibit to any person  
251 designated by this Company all that remains of any prop-  
252 erty herein described, and submit to examinations under

oath by any person named by this Company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

*Appraisal.* In case the insured and this Company shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then, on request of the insured or this Company, such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

*Company's options.* It shall be optional with this Company to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required.

*Abandonment.* There can be no abandonment to this Company of any property.

*When loss payable.* The amount of loss for which this Company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this Company and ascertainment of the loss is made either by

293 agreement between the insured and this Company ex-  
294 pressed in writing or by the filing with this Company of  
295 an award as herein provided.

296 *Suit.* No suit or action on this policy for the recovery  
297 of any claim shall be sustainable in any court of law or  
298 equity unless all the requirements of this policy shall  
299 have been complied with, and unless commenced within  
300 twelve months next after inception of the loss.

301 *Subrogation.* This Company may require from the in-  
302 sured an assignment of all right of recovery against any  
303 party for loss to the extent that payment therefor is  
304 made by this Company.

305 ATTACH FORM BELOW THIS LINE

306 Standard Fire Insurance Policy of the State of.....

307 .....

308 Expires .....

309 Property .....

310 Assured .....

311 No.....

312 (COMPANY)

313 It is important that the written portions of all policies  
314 covering the same property read exactly alike. If they  
315 do not, they should be made uniform at once.

—o—

## CHAPTER 73

(House Bill No. 215—By Mr. Morgan)

AN ACT to amend and reenact section eighteen, article four,  
chapter thirty-three of the code of West Virginia, one thou-  
sand nine hundred thirty-one, as amended, relating to rate  
deviations.

[Passed February 24, 1949: in effect ninety days from passage. Approved by the  
Governor.]

### Article 4. Fire and Marine Insurance.

#### Section

18. Deviations; judicial review.

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

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

Section 18. *Deviations; Judicial Review.*—Every member of or subscriber to a rating organization shall adhere to the filings made on its behalf by such organization except that any such insurer may make written application to the commissioner for permission to file a deviation from the class rates, schedules, rating plans or rules respecting any kind of insurance, or class of risk within a kind of insurance, or combination thereof. Such application shall specify the basis for the modification and a copy thereof shall also be sent simultaneously to such rating organization. The commissioner shall set a time and place for a hearing at which the insurer and such rating organization may be heard and shall give them not less than ten days' written notice thereof. In the event the commissioner is advised by the rating organization that it does not desire a hearing he may, upon the consent of the applicant, waive such hearing. In considering the application for permission to file such deviation the commissioner shall give consideration to the available statistics and the principles for rate making as provided in chapter thirty-three, article four-a, section three. The commissioner shall issue an order permitting the deviation for such insurer to be filed if he finds it to be justified and it shall thereupon become effective. He shall issue an order denying such application if he finds that the resulting premiums would be excessive, inadequate or unfairly discriminatory. Each deviation permitted to be filed shall be effective for a period of one year from the date of such permission unless terminated sooner with the approval of the commissioner. Judicial review of the commissioner's action respecting any deviation may be had by any party, as provided in chapter thirty-three, article four-a, section seventeen.



## CHAPTER 74

(House Bill No. 217—By Mr. Trent)

AN ACT to amend and reenact section twenty-one, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, relating to exemptions from fire insurance statutes.

[Passed February 25, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 4. Fire and Marine Insurance.

#### Section

21. Exemptions; right to secure information; adjustments obligatory at request of any company; charges.

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

That section twenty-one, 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 21. *Exemptions; Right to Secure Information; Adjustments Obligatory at Request of Any Company; Charges.*—This article shall not apply to farmers' mutual insurance companies organized under the laws of this state; nor to the rolling stock of railroad corporations, or property in transit while in the possession of railroad companies or other common carriers, nor to the property of such common carriers used or employed by them in their business of carrying freight, merchandise or passengers: *Provided, however,* That any company, association, or person, licensed under the insurance laws of this state, may at their request be entitled to receive any or all of the rates, bulletins, and other information published or prepared by such rate making association, on payment of such reasonable charges as may be made: *Provided further,* That it shall be obligatory upon any adjuster, adjusting bureau or corporation making adjustments on any property or properties, insured in this state by more than one company, to make adjustments for any or all companies making request for same, charging each company making such request a pro rata amount of the expenses incurred in making such adjustment.

## CHAPTER 75

(House Bill No. 260—By Mr. Trent, by request)

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article seven-a, relating to excess line brokers and licensing thereof.

[Passed March 12, 1949; in effect from passage. Approved by the Governor.]

### Article 7-a. Excess Line Brokers.

#### Section

1. Licensing of excess line brokers.
2. Application for license.
3. License fee.
4. Term of license and renewal thereof.
5. Affidavit of licensee when insurance is procured.
6. Records required to be kept by licensee.
7. Bond.
8. Reports by licensee to insurance commissioner; amount and payment of tax on gross business.

### *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, as amended, be amended and reenacted by adding thereto a new article, to be designated article seven-a, to read as follows:

- Section 1. *Licensing of Excess Line Brokers.*—The insurance commissioner may issue an excess line broker's license to any person who is domiciled or maintains an office in this state and is licensed as an insurance agent under article seven, section one of this chapter, or as a nonresident insurance broker under article seven, section five of this chapter, authorizing such licensee to procure, subject to the restrictions herein provided, policies of insurance against loss or damage to property or person from any cause, from insurers which are not authorized to transact business in this state. Such license may be suspended or revoked by the insurance commissioner whenever, in his judgment, such suspension or revocation will best promote the interests of the people of this state.

Sec. 2. *Application for License.*—Before any such license shall be issued by the commissioner, and before each renewal thereof, there shall be filed in his office a written application by the person desiring such license, in such form, or forms, and supplements thereto, and containing such information as the commissioner may prescribe.

Sec. 3. *License Fee.*—At the time of application for every such license and for every renewal thereof, there shall be paid to the commissioner by each applicant, a fee of fifty dollars.

Sec. 4. *Term of License and Renewal Thereof.*—Every license issued pursuant to this section shall be for a term expiring on the thirty-first day of March next following the date of its issuance and may be renewed for the ensuing license year, upon the filing of an application in conformity with subsection two and paying the fee prescribed by subsection three.

Sec. 5. *Affidavit of Licensee When Insurance Is Procured.*—When any policy of insurance is procured under the authority of such license, there shall be executed by the licensee an affidavit showing that such licensee was unable, after diligent effort, to procure from any authorized insurer or insurers the full amount of insurance required to protect the property owned or controlled by an insured and further showing that the amount of insurance procured from an unauthorized insurer or insurers is only the excess over the amount so procurable from authorized insurers. Such affidavit shall be filed by such licensee with the commissioner within thirty days after such policies have been procured.

Sec. 6. *Records Required to Be Kept by Licensee.*—The licensee shall keep a complete and separate record of all policies procured from unauthorized insurers under such license. Such records shall be open to the examination by the commissioner, as provided in article seven, section nine of this chapter, at all reasonable times and shall show: (a) the exact amount of insurance permitted under this section which has been procured for each in-

9   sured; (b) the gross premiums charged by the insurers  
10 for the insurance permitted under this section; (c) the  
11 amount of premiums permitted by this section which  
12 were returned to each insured; (d) the name of the in-  
13 surer or insurers which issued each of said policies; (e)  
14 the effective dates of such policies; (f) the terms for  
15 which they were issued; and (g) the location of the risk  
16 within this state.

Sec. 7. *Bond.*—No such license and no renewal thereof  
2 shall be granted unless the applicant shall have filed with  
3 the commissioner a bond, payable to the state of West  
4 Virginia, in the penal sum of two thousand dollars, ap-  
5 proved by the attorney general as to form and by the  
6 commissioner as to sufficiency of the security thereof.  
7 Such bond shall be conditioned that the said licensee will  
8 faithfully comply with all the requirements of this section.

•Sec. 8. *Reports by Licensee to Insurance Commissioner;*  
2 *Amount and Payment of Tax on Gross Business.*—Every  
3 person licensed, pursuant to the provisions of this article,  
4 shall make a return annually, under oath, on or before  
5 the first day of March, to the insurance commissioner of  
6 the gross amount of premiums charged the insureds by  
7 the insurers for insurance procured by such licensee, pur-  
8 suant to such license during the previous calendar year;  
9 and upon receiving from the commissioner a certificate  
10 of the acceptance of such return and of the amount of tax  
11 due thereon, the person making such return shall pay  
12 such tax to the insurance commissioner annually on or  
13 before the first day of March. The annual tax required  
14 to be paid, under the provisions of this section, shall be  
15 a sum equal to two percent of the gross premiums re-  
16 ceived on the gross business procured by such licensee  
17 on risks located in this state and obtained pursuant to  
18 the provisions of this article, including any so-called divi-  
19 dends on participating insurance policies applied in re-  
20 duction of premiums, less premiums returnable for can-  
21 cellation. All such taxes paid to the commissioner shall  
22 be paid by him into the state treasury for the benefit of  
23 the state fund.

## CHAPTER 76

(House Bill No. 175—By Mr. Trent, by request)

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article to be designated article fifteen, relative to the regulation of rates for certain casualty insurance including fidelity, surety and guaranty bonds and all other forms of motor vehicle insurance, and to rating organizations.

[Passed March 12, 1949; in effect April 1, 1949. Approved by the Governor.]

### Article 15. Casualty Insurance Rates and Rating Organizations.

#### Section

1. Purpose of article.
2. Scope of article.
3. Making of rates.
4. Rate filings.
5. Disapproval of filings.
6. Alternative filing section.
7. Rating organizations.
8. Deviations.
9. Appeal by minority.
10. Information to be furnished insureds; hearings and appeals of insureds.
11. Advisory organizations.
12. Joint underwriting or joint reinsurance.
13. Examinations.
14. Rate administration.
15. False or misleading information.
16. Assigned risks.
17. Rebates prohibited.
18. Penalties.
19. Hearing procedure and judicial review.
20. Laws repealed.
21. Constitutionality.

#### *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, as amended, be amended by adding thereto a new article to be designated article fifteen, to read as follows:

- Section 1. *Purpose of Article.*—The purpose of this article is to promote the public welfare by regulating certain

3 insurance rates to the end that they shall not be excessive,  
4 inadequate or unfairly discriminatory, and to authorize  
5 and regulate cooperative action among insurers in rate  
6 making and in other matters within the scope of this arti-  
7 cle. Nothing in this article is intended (1) to prohibit  
8 or discourage competition, or (2) to prohibit, or encour-  
9 age except to the extent necessary to accomplish the afore-  
10 mentioned purpose hereof, uniformity in insurance rates,  
11 rating systems, rating plans or practices. This article  
12 shall be liberally interpreted to carry into effect the  
13 provisions of this section.

Sec. 2. *Scope of Article.*—This article applies to cas-  
2 ualty insurance including fidelity, surety and guaranty  
3 bonds, and to all other forms of motor vehicle insurance,  
4 on risks or operations in this state, except:

5 (a) Reinsurance, other than joint reinsurance to the  
6 extent stated in section twelve;

7 (b) Accident and health insurance;

8 (c) Insurance against loss of or damage to aircraft  
9 or against liability, other than employers' liability, aris-  
10 ing out of the ownership, maintenance or use of aircraft;  
11 and

12 (d) Title insurance.

13 This article applies to all insurers, including stock and  
14 mutual insurers, reciprocal and inter-insurance exchanges  
15 which under any provisions of the laws of this state write  
16 any of the kinds of insurance to which this article ap-  
17 plies.

18 If any kind of insurance, subdivision or combination  
19 thereof, or type of coverage, subject to this article, is  
20 also subject to regulation by another rate regulatory act  
21 of this state, an insurer to which both acts are otherwise  
22 applicable shall file with the commissioner of insurance,  
23 hereinafter referred to as commissioner, a designation  
24 as to which rate regulatory act shall be applicable to it  
25 with respect to such kind of insurance, subdivision or  
26 combination thereof, or type of coverage.

Sec. 3. *Making of Rates.*—(a) All rates shall be made  
2 in accordance with the following provisions:

3 1. Due consideration shall be given to past and pros-  
4 pective loss experience within and outside this state, to  
5 catastrophe hazards, if any, to a reasonable margin for  
6 underwriting profit and contingencies, to dividends, sav-  
7 ings or unabsorbed premium deposits allowed or returned  
8 by insurers to their policyholders, members or subscrib-  
9 ers, to past and prospective expenses both countrywide  
10 and those specially applicable to this state, to such  
11 factors as expense, management, individual experience,  
12 underwriting judgment, degree or nature of hazard or  
13 any other reasonable considerations, provided such fac-  
14 tors apply to all risks under the same or substantially  
15 the same circumstances or conditions, and to all other  
16 relevant factors within and outside this state;

17 2. The system of expense provisions included in the  
18 rates for use by any insurer or group of insurers may  
19 differ from those of other insurers or groups of insurers  
20 to reflect the requirements of the operating methods of  
21 any such insurer or group with respect to any kind of  
22 insurance, or with respect to any subdivision or com-  
23 bination thereof for which subdivision or combination  
24 separate expense provisions are applicable;

25 3. Risk may be grouped by classifications for the es-  
26 tablishment of rates and minimum premiums. Classifi-  
27 cation rates may be modified to produce rates for in-  
28 dividual risks in accordance with rating plans which  
29 establish standards for measuring variations in hazards  
30 or expense provisions, or both. Such standards may  
31 measure any differences among risks that can be dem-  
32 onstrated to have a probable effect upon losses or ex-  
33 penses;

34 4. Rates shall not be excessive, inadequate or unfairly  
35 discriminatory.

36 (b) Except to the extent necessary to meet the pro-  
37 visions of subdivision four of subsection (a) of this sec-  
38 tion, uniformity among insurers in any matter within  
39 the scope of this section is neither required nor prohib-  
40 ited.

Sec. 4. *Rate Filings.*—(a) Every insurer shall file with  
2 the commissioner every manual of classifications, rules

3 and rates, every rating plan and every modification of  
4 any of the foregoing which it proposes to use. Every  
5 such filing shall state the proposed effective date there-  
6 of, and shall indicate the character and extent of the  
7 coverage contemplated. When a filing is not accompa-  
8 nied by the information upon which the insurer supports  
9 such filing, and the commissioner does not have sufficient  
10 information to determine whether such filing meets the  
11 requirements of this article he may require such insurer  
12 to furnish the information upon which it supports such  
13 filing and in such event the waiting period shall commence  
14 as of the date such information is furnished. The informa-  
15 tion furnished in support of a filing shall include (1) the  
16 experience or judgment of the insurer or rating organiza-  
17 tion making the filing, (2) its interpretation of any statis-  
18 tical data it relies upon, (3) the experience of other in-  
19 surers or rating organizations, or (4) any other relevant  
20 factors. A filing and any supporting information shall be  
21 open to public inspection after the filing becomes effec-  
22 tive.

23 (b) An insurer may satisfy its obligation to make such  
24 filings by becoming a member of, or a subscriber to, a  
25 licensed rating organization which makes such filings,  
26 and by authorizing the commissioner to accept such fil-  
27 ings on its behalf: *Provided*, That nothing contained in  
28 this article shall be construed as requiring any insurer  
29 to become a member of or a subscriber to any rating or-  
30 ganization.

31 (c) The commissioner shall review filings as soon as  
32 reasonably possible after they have been made in order  
33 to determine whether they meet the requirements of this  
34 article.

35 (d) Subject to the exception specified in this and in  
36 subsection (e) of this section, each filing shall be on file  
37 for a waiting period of fifteen days before it become ef-  
38 fective, which period may be extended by the commis-  
39 sioner for one additional period not to exceed fifteen days  
40 if he gives written notice within such waiting period to  
41 the insurer or rating organization which made the filing  
42 that he needs such additional time for the consideration



43 of such filing. Upon written application by such insurer  
44 or rating organization, the commissioner may authorize  
45 a filing which he has reviewed to become effective be-  
46 fore the expiration of the waiting period or any extension  
47 thereof. A filing shall be deemed to meet the require-  
48 ments of this article unless disapproved by the commis-  
49 sioner within the waiting period or any extension there-  
50 of.

51 (e) Any special filing with respect to a surety or guar-  
52 anty bond required by law or by court or executive order  
53 or by order, rule or regulation of a public body, not cov-  
54 ered by a previous filing, shall become effective when  
55 filed and shall be deemed to meet the requirements of  
56 this article until such time as the commissioner reviews  
57 the filing and so long thereafter as the filing remains in  
58 effect.

59 (f) Under such rules and regulations as he shall adopt  
60 the commissioner may, by written order, suspend or  
61 modify the requirement of filings as to any kind of in-  
62 surance, subdivision or combination thereof, or as to  
63 classes of risks, the rates for which cannot practicably  
64 be filed before they are used. Such orders, rules and reg-  
65 ulations shall be made known to insurers and rating or-  
66 ganizations affected thereby. The commissioner may make  
67 such examination as he may deem advisable to ascertain  
68 whether any rates affected by such order meet the stand-  
69 ards set forth in subdivision four of subsection (a) of  
70 section three.

71 (g) Upon the written application of the insured, stat-  
72 ing his reasons therefor, an insurer may use, subject to  
73 such rules and regulations as the commissioner may adopt,  
74 a rate in excess of that provided by any filing otherwise  
75 applicable on any specific risk.

76 (h) Beginning ninety days after the effective date of  
77 this article no insurer shall make or issue a contract or  
78 policy except in accordance with filings which are in ef-  
79 fect for said insurer as provided in this article or in ac-  
80 cordance with sub-sections (f) or (g) of this section.

Sec. 5. *Disapproval of Filings.*—(a) If within the wait-

2 ing period or an extension thereof as provided in sub-  
3 section (d) of section four, the commissioner finds that  
4 a filing does not meet the requirements of this article,  
5 he shall send to the insurer or rating organization which  
6 made such filing written notice of disapproval of such  
7 filing specifying therein in what respects he finds such  
8 filing fails to meet the requirements of this article and  
9 stating that such filing shall not become effective.

10 (b) If within thirty days after a special surety or  
11 guaranty filing subject to subsection (e) of section four  
12 has become effective, the commissioner finds that such  
13 filing does not meet the requirements of this article, he  
14 shall send to the insurer or rating organization which  
15 made such filing written notice of disapproval of such  
16 filing, specifying therein in what respects he finds that  
17 such filing fails to meet the requirements of this article  
18 and stating when, within a reasonable period thereafter,  
19 such filing shall be deemed no longer effective. Said dis-  
20 approval shall not affect any contract made or issued  
21 prior to the expiration of the period set forth in said no-  
22 tice.

23 (c) If at any time subsequent to the applicable review  
24 provided for in subsection (a) or (b) of this section,  
25 the commissioner finds that a filing does not meet the  
26 requirements of this article, he shall, after a hearing held  
27 upon not less than ten days' written notice, specifying  
28 the matters to be considered at such hearing, to every  
29 insurer and rating organization which made such filing,  
30 issue an order specifying in what respects he finds that  
31 such filing fails to meet the requirements of this article,  
32 and stating when, within a reasonable period thereafter,  
33 such filing shall be deemed no longer effective. Copies  
34 of said order shall be sent to every such insurer and  
35 rating organization. Said order shall not affect any con-  
36 tract or policy made or issued prior to the expiration of  
37 the period set forth in said order.

38 (d) Any person or organization aggrieved with respect  
39 to any filing which is in effect may make written appli-  
40 cation to the commissioner for a hearing thereon: *Pro-*  
41 *vided, however,* That the insurer or rating organization

42 that made the filing shall not be authorized to proceed  
43 under this subsection. Such application shall specify  
44 the grounds to be relied upon by the applicant. If the  
45 commissioner shall find that the application is made in  
46 good faith, that the applicant would be so aggrieved if  
47 his grounds are established, and that such grounds other-  
48 wise justify holding such a hearing, he shall, within thir-  
49 ty days after receipt of such application, hold a hearing  
50 upon not less than ten days' written notice to the appli-  
51 cant and to every insurer and rating organization which  
52 made such filing.

53 If, after such hearing, the commissioner finds that the  
54 filing does not meet the requirements of this article, he  
55 shall issue an order specifying in what respects he finds  
56 that such filing fails to meet the requirements of this arti-  
57 cle, and stating when, within a reasonable period there-  
58 after, such filing shall be deemed no longer effective.  
59 Copies of said order shall be sent to the applicant and  
60 to every such insurer and rating organization. Said order  
61 shall not affect any contract or policy made or issued prior  
62 to the expiration of the period set forth in said order.

63 (e) No manual of classifications, rules, rating plan or  
64 any modification of any of the foregoing which estab-  
65 lishes standards for measuring variations in hazards or  
66 expense provisions, or both, and which has been filed  
67 pursuant to the requirements of section four of this arti-  
68 cle shall be disapproved if the rates thereby produced  
69 meet the requirements of this article.

Sec. 6. *Alternative Filing Section.*—(a) In lieu of the  
2 filing and review procedure provided in sections four and  
3 five, such filings, other than special surety or guaranty  
4 bond filings referred to in subsection (e) of section four,  
5 may be made under this section and the rates shall become  
6 effective immediately upon filing or at such future time  
7 as the insurer or rating organization making them may  
8 specify and shall thereafter remain in effect unless and  
9 until changed by the insurer or rating organization mak-  
10 ing them, or adjusted by order of the commissioner as in  
11 this section provided.

12 (b) Whenever the commissioner upon his own informa-  
13 tion, or upon complaint of any member of the public  
14 alleged to be aggrieved thereby, shall have reason to be-  
15 lieve that any of the rates filed under this section are not  
16 in accordance with the provisions of this act, he shall have  
17 the power and authority to investigate to the extent he  
18 shall see fit the necessity for an adjournment of any or  
19 all of such rates.

20 (c) After such investigation, the commissioner shall,  
21 before ordering any appropriate adjustment thereof, hold  
22 a hearing upon not less than ten days' written notice  
23 specifying the matter to be considered at such hearing,  
24 to every insurer and rating organization which files such  
25 rates under inquiry, but no hearing shall be held if every  
26 insurer and rating organization affected shall advise the  
27 commissioner that they do not desire such hearing. If  
28 after such hearing, the commissioner determines that any  
29 or all of such rates are excessive, inadequate or unfairly  
30 discriminatory, as between individual risks or classes of  
31 risks of an insurer he shall order appropriate adjustment  
32 thereof. Pending such investigation and order of the com-  
33 missioner, rates shall be deemed to have been made in  
34 accordance with the terms of this act. No order of adjust-  
35 ment shall affect any contract or policy made or issued  
36 prior to the effective date of his order unless (a) the ad-  
37 justment to be effected is substantial and exceeds the cost  
38 to the company of making the adjustment; and (b) the  
39 order is made after the prescribed investigation and hear-  
40 ing and within sixty days after the filing of rates affected.  
41 If in event of a rate adjustment requiring an increased  
42 rate, the policyholder does not accept such increase, can-  
43 cellation shall be made on a pro rata basis. Each policy  
44 issued pursuant to filing under this section which may be  
45 subject to rate or premium adjustment, shall so provide  
46 in language to be approved by the commissioner.

47 (d) The commissioner after such sixty-day period may  
48 review any such rates in the manner and subject to the  
49 conditions provided in subsection (c) of section five.

50 (e) In determining the necessity for an adjustment of  
51 rates, the commissioner shall observe the provisions of

52 section three and subdivision (e) or section five and shall  
53 give consideration to the type of information which may  
54 be furnished in support of a filing as set forth in sub-  
55 section (a) of section four.

Sec. 7. *Rating Organizations.*—(a) A corporation, an  
2 unincorporated association, a partnership or an individual,  
3 whether located within or outside this state, may make  
4 application to the commissioner for license as a rating  
5 organization for such kinds of insurance or sub-divisions  
6 thereof as are specified in its application and shall file  
7 therewith (1) a copy of its constitution, its articles of  
8 agreement or association or its certificate of incorporation,  
9 and of its by-laws, rules and regulations governing the  
10 conduct of its business, (2) a list of its members and  
11 subscribers, (3) the name and address of a resident of  
12 this state upon whom notices or orders of the commis-  
13 sioner or process affecting such rating organization may  
14 be served and (4) a statement of its qualifications as a  
15 rating organization. If the commissioner finds that the  
16 applicant is competent, trustworthy and otherwise  
17 qualified to act as a rating organization and that its con-  
18 stitution, articles of agreement or association or certificate  
19 of incorporation, and its by-laws, rules and regulations  
20 governing the conduct of its business conform to the re-  
21 quirements of law, he shall issue a license specifying the  
22 kinds of insurance or subdivision thereof for which the  
23 applicant is authorized to act as a rating organization.  
24 Every such application shall be granted or denied in  
25 whole or in part by the commissioner within sixty days  
26 of the date of its filing with him. Licenses issued pur-  
27 suant to this section shall remain in effect for three years  
28 unless sooner suspended or revoked by the commissioner.  
29 The fee for said license shall be twenty-five dollars. Said  
30 license fee shall be in lieu of all other fees, licenses or  
31 taxes to which said rating organization may otherwise be  
32 subject. Licenses issued pursuant to this section may be  
33 suspended or revoked by the commissioner, after hearing  
34 upon notice, in the event the rating organization ceases  
35 to meet the requirements of this subsection. Every rating  
36 organization shall notify the commissioner promptly of

37 every change in (1) its constitution, its articles of agree-  
38 ment or association or its certificate of incorporation, and  
39 its by-laws, rules and regulations governing the conduct  
40 of its business, (2) its list of members and subscribers and  
41 (3) the name and address of the resident of this state  
42 designated by it upon whom notices or orders of the com-  
43 missioner or process affecting such rating organization  
44 may be served.

45 (b) Subject to rules and regulations which have been  
46 approved by the commissioner as reasonable, each rating  
47 organization shall permit any insurer, not a member, to  
48 be a subscriber to its rating services for any kind of in-  
49 surance or subdivision thereof for which it is authorized  
50 to act as a rating organization. Notice of proposed changes  
51 in such rules and regulations shall be given to subscribers.  
52 Each rating organization shall furnish its rating services  
53 without discrimination to its members and subscribers.  
54 The reasonableness of any rule or regulation in its ap-  
55 plication to subscribers, or the refusal of any rating or-  
56 ganization to admit an insurer as a subscriber, shall, at  
57 the request of any subscriber or any such insurer, be  
58 reviewed by the commissioner at a hearing held upon at  
59 least ten days' written notice to such rating organization  
60 and to such subscriber or insurer. If the commissioner  
61 finds that such rule or regulation is unreasonable in its  
62 application to subscribers, he shall order that such rule  
63 or regulation shall not be applicable to subscribers. If the  
64 rating organization fails to grant or reject an insurer's  
65 application for subscribership within thirty days after it  
66 was made, the insurer may request a review by the com-  
67 missioner as if the application had been rejected. If the  
68 commissioner finds that the insurer has been refused ad-  
69 mittance to the rating organization as a subscriber with-  
70 out justification, he shall order the rating organization to  
71 admit the insurer as a subscriber. If he finds that the ac-  
72 tion of the rating organization was justified, he shall make  
73 an order affirming its action.

74 (c) No rating organization shall adopt any rules the  
75 effect of which would be to prohibit or regulate the pay-  
76 ment of dividends, savings or unabsorbed premium de-

77 posits allowed or returned by insurers to their policy-  
78 holders, members or subscribers.

79 (d) Cooperation among rating organizations or among  
80 rating organizations and insurers in rate making or in  
81 other matters within the scope of this article is hereby  
82 authorized, provided the filings resulting from such co-  
83 operation are subject to all the provisions of this article  
84 which are applicable to filings generally. The commis-  
85 sioner may review such cooperative activities and prac-  
86 tices and if, after a hearing, he finds that any such ac-  
87 tivity or practice is unfair or unreasonable or otherwise  
88 inconsistent with the provisions of this article, he may  
89 issue a written order specifying in what respect such ac-  
90 tivity or practice is unfair or unreasonable or otherwise  
91 inconsistent with the provisions of this article, and re-  
92 quiring the discontinuance of such activity or practice.

Sec. 8. *Deviations.*—Every member of or subscriber to  
2 a rating organization shall adhere to the filings made on  
3 its behalf by such organization except that any such in-  
4 surer may make written application to the commissioner  
5 for permission to file a uniform percentage decrease or  
6 increase to be applied to the premiums produced by the  
7 rating system so filed for a kind of insurance, or for a  
8 class of insurance which is found by the commissioner to  
9 be a proper rating unit for the application of such uniform  
10 percentage decrease or increase, or for a subdivision of a  
11 kind of insurance (1) comprised of a group of manual  
12 classifications which is treated as a separate unit for rate  
13 making purposes, or (2) for which separate expense pro-  
14 visions are included in the filings of the rating organiza-  
15 tion. Such application shall specify the basis for the modi-  
16 fication and shall be accompanied by the data upon which  
17 the applicant relies. A copy of the application and data  
18 shall be sent simultaneously to such rating organization.  
19 The commissioner shall set a time and place for a hearing  
20 at which the insurer and such rating organization may be  
21 heard and shall give them not less than ten days' written  
22 notice thereof. In the event the commissioner is advised  
23 by the rating organization that it does not desire a hearing  
24 he may, upon the consent of the applicant, waive such

25 hearing. The commissioner shall issue an order permit-  
26 ting the modification for such insurer to be filed if he finds  
27 it to be justified and it shall thereupon become effective.  
28 He shall issue an order denying such application if he  
29 finds that the modification is not justified or that the re-  
30 sulting premiums would be excessive, inadequate or un-  
31 fairly discriminatory. Each deviation permitted to be filed  
32 shall be effective for a period of one year from the date of  
33 such permission unless terminated sooner with the ap-  
34 proval of the commissioner.

Sec. 9. *Appeal by Minority.*—Any member of or sub-  
2 scriber to a rating organization may appeal to the com-  
3 missioner from the action or decision of such rating or-  
4 ganization in approving or rejecting any proposed change  
5 in or addition to the filings of such rating organization  
6 and the commissioner shall, after a hearing held upon not  
7 less than ten days' written notice to the appellant and to  
8 such rating organization, issue an order approving the  
9 action or decision of such rating organization or directing  
10 it to give further consideration to such proposal, or, if  
11 such appeal is from the action or decision of the rating  
12 organization in rejecting a proposed addition to its filings,  
13 he may, in the event he finds that such action or decision  
14 was unreasonable, issue an order directing the rating or-  
15 ganization to make an addition to its filings, on behalf of  
16 its members and subscribers, in a manner consistent with  
17 his findings, within a reasonable time after the issuance  
18 of such order.

19 If such appeal is based upon the failure of the rating  
20 organization to make a filing on behalf of such member  
21 or subscriber which is based on a system of expense pro-  
22 visions which differs in accordance with the right granted  
23 in subdivision two of subsection (a) of section three, from  
24 the system of expense provisions included in a filing made  
25 by the rating organization, the commissioner shall, if he  
26 grants the appeal, order the rating organization to make  
27 the requested filing for use by the appellant. In deciding  
28 such appeal the commissioner shall apply the standards  
29 set forth in section three.



Sec. 10. *Information to Be Furnished Insureds; Hearings and Appeals of Insureds.*—Every rating organization and every insurer which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate.

Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or reject such request within thirty days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within thirty days after written notice of such action, appeal to the commissioner, who, after a hearing held upon not less than ten days' written notice to the appellant and to such rating organization or insurer, may affirm or reverse such action.

Sec. 11. *Advisory Organizations.*—(a) Every group, association or other organization of insurers, whether located within or outside this state, which assists insurers which make their own filings or rating organizations in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but which does not make filings under this article, shall be known as an advisory organization.

(b) Every advisory organization shall file with the commissioner (1) a copy of its constitution, its articles of agreement or association or its certificate of incorporation and of its by-laws, rules and regulations governing its activities, (2) a list of its members, (3) the name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at his direc-

16 tion may be served, and (4) an agreement that the com-  
17 missioner may examine such advisory organization in ac-  
18 cordance with the provisions of section twelve of this  
19 article.

20 (c) If, after a hearing, the commissioner finds that the  
21 furnishing of such information or assistance involves any  
22 act or practice which is unfair or unreasonable or other-  
23 wise inconsistent with the provisions of this article, he  
24 may issue a written order specifying in what respects such  
25 act or practice is unfair or unreasonable or otherwise in-  
26 consistent with the provisions of this article, and requir-  
27 ing the discontinuance of such act or practice.

28 (d) No insurer which makes its own filings nor any  
29 rating organization shall support its filings by statistics  
30 or adopt rate making recommendations, furnished to it  
31 by an advisory organization which has not complied with  
32 this section or with an order of the commissioner involv-  
33 ing such statistics or recommendations issued under sub-  
34 section (c) of this section. If the commissioner finds such  
35 insurer or rating organization to be in violation of this  
36 subsection he may issue an order requiring the discon-  
37 tinuance of such violation.

Sec. 12. *Joint Underwriting or Joint Reinsurance.*—

2 (a) Every group, association or other organization of in-  
3 surers which engages in joint underwriting or joint re-  
4 insurance, shall be subject to regulation with respect  
5 thereto as herein provided, subject however, with respect  
6 to joint underwriting, to all other provisions of this article  
7 and with respect to joint reinsurance, to sections thirteen  
8 and seventeen to twenty-one of this article.

9 (b) If, after a hearing, the commissioner finds that any  
10 activity or practice of any such group, association or other  
11 organization is unfair or unreasonable or otherwise in-  
12 consistent with the provisions of this article, he may issue  
13 a written order specifying in what respect such activity  
14 or practice is unfair or unreasonable or otherwise incon-  
15 sistent with the provisions of this article, and requiring  
16 the discontinuance of such activity or practice.

Sec. 13. *Examinations.*—The commissioner shall, at least

2 once in five years, make or cause to be made an examina-  
3 tion of each rating organization licensed in this state as  
4 provided in section seven and he may, as often as he  
5 may deem it expedient, make or cause to be made an  
6 examination of each advisory organization referred to in  
7 section eleven and of each group, association or other  
8 organization referred to in section twelve. The reasonable  
9 costs of any such examination shall be paid by the rating  
10 organization, advisory organization, or group, association  
11 or other organization examined upon presentation to it of  
12 a detailed account of such costs. The officer, manager,  
13 agents and employees of such rating organization, ad-  
14 visory organization, or group, association or other organi-  
15 zation may be examined at any time under oath and shall  
16 exhibit all books, records, accounts, documents, or agree-  
17 ments governing its method of operation. The commis-  
18 sioner shall furnish two copies of the examination report  
19 to the organization, group or association examined and  
20 shall notify such organization, group or association that  
21 it may, within twenty days thereafter, request a hearing  
22 on said report or on any facts or recommendations therein.  
23 Before filing such report for public inspection, the com-  
24 missioner shall grant a hearing to the organization, group  
25 or association examined. The report of any such examina-  
26 tion, when filed for public inspection, shall be admissible  
27 in evidence in any action or proceeding brought by the  
28 commissioner against the organization, group or associa-  
29 tion examined, or its officers or agents, and shall be prima  
30 facie evidence of the facts stated therein. The commis-  
31 sioner may withhold the report of any such examination  
32 from public inspection for such time as he may deem  
33 proper. In lieu of any such examination the commissioner  
34 may accept the report of an examination made by the in-  
35 surance supervisory official of another state, pursuant to  
36 the laws of such state.

Sec. 14. *Rate Administration.*—(a) The commissioner  
2 shall promulgate reasonable rules and statistical plans,  
3 reasonably adapted to each of the rating systems on file  
4 with him, which may be modified from time to time and  
5 which shall be used thereafter by each insurer in the

6 recording and reporting of its loss and countrywide ex-  
7 pense experience in order that the experience of all in-  
8 surers may be made available at least annually in such  
9 form and detail as may be necessary to aid him in determ-  
10 ining whether rating systems comply with the standards  
11 set forth in section three. Such rules and plans may also  
12 provide for the recording and reporting of expense expe-  
13 rience items which are specially applicable to this state  
14 and which are not susceptible of determination by a pro-  
15 rating of countrywide expense experience. In promulgat-  
16 ing such rules and plans, the commissioner shall give due  
17 consideration to the rating system on file with him and,  
18 in order that such rules and plans may be as uniform as  
19 is practicable among the several states, to the rules and  
20 to the form of the plans used for such rating systems in  
21 other states. Each insurer shall record and report its loss  
22 experience on a classification basis consistent with the  
23 rating system filed by it. Any insurer may report such  
24 experience direct to the commissioner or may satisfy its  
25 obligation to report such experience by becoming a mem-  
26 ber of, or a subscriber to, a licensed rating or qualified  
27 advisory organization which gathers, compiles and re-  
28 ports to the commissioner the experience required by this  
29 section and by authorizing the commissioner to accept  
30 such reports on its behalf. No insurer shall be required  
31 to report such experience to any licensed rating or quali-  
32 fied advisory organization of which it is not a member or  
33 subscriber. The experience of individual insurers thus re-  
34 ported to the commissioner shall not be revealed by him,  
35 except by court order, but the commissioner shall make a  
36 compilation of all such experience to the extent he may  
37 deem practicable and he shall, to the extent he may deem  
38 practicable, make a consolidation of all compilations filed  
39 with him and those made by him. All such compilations  
40 and consolidations shall be available to licensed insurers  
41 and licensed rating and qualified advisory organizations  
42 and shall also be open to public inspection, subject to  
43 reasonable rules promulgated by the commissioner.

44 (b) Reasonable rules and plans may be promulgated by  
45 the commissioner for the interchange of data necessary  
46 for the application of rating plans.

47 (c) In order to further uniform administration of rate  
48 regulatory laws, the commissioner and every insurer and  
49 rating organization may exchange information and expe-  
50 rience data with insurance supervisory officials, insurers  
51 and rating organizations in other states and may consult  
52 with them with respect to rate making and the application  
53 or rating systems.

54 (d) The commissioner may make reasonable rules and  
55 regulations necessary to effect the purposes of this article.

Sec. 15. *False or Misleading Information.*—No person  
2 or organization shall wilfully withhold information from,  
3 or knowingly give false or misleading information to, the  
4 commissioner, any statistical agency designated by the  
5 commissioner, any rating organization, or any insurer,  
6 which will affect the rates or premiums chargeable under  
7 this article. A violation of this section shall subject the  
8 one guilty of such violation to the penalties provided in  
9 section eighteen of this article.

Sec. 16. *Assigned Risks.*—Agreements may be made  
2 among insurers with respect to the equitable apportion-  
3 ment among them of insurance which may be afforded  
4 applicants who are in good faith entitled to but who are  
5 unable to procure such insurance through ordinary meth-  
6 ods and such insurers may agree among themselves on  
7 the use of reasonable rate modifications for such insur-  
8 ance, such agreements and rate modifications to be subject  
9 to the approval of the commissioner.

Sec. 17. *Rebates Prohibited.*—No broker, agent or  
2 solicitor shall knowingly charge, demand or receive a  
3 premium for any policy of insurance except in accord-  
4 ance with the provisions of this article. No insurer or em-  
5 ployee thereof, and no broker, agent or solicitor shall pay,  
6 allow, or give, or offer to pay, allow, or give, directly or  
7 indirectly as an inducement to insurance, or after insur-  
8 ance has been effected, any rebate, discount abatement,  
9 credit or reduction of the premium named in a policy of  
10 insurance, or any special favor or advantage in the divi-  
11 dends or other benefits to accrue thereon, or any valuable  
12 consideration or inducement whatever, not specified in the

13 policy of insurance, except to the extent provided for in  
14 an applicable filing. No insured named in a policy of in-  
15 surance, nor any employee of such insured shall know-  
16 ingly receive or accept, directly or indirectly, any such  
17 rebate, discount, abatement, credit or reduction of pre-  
18 mium, or any such special favor or advantage or valuable  
19 consideration or inducement.

20 Nothing in this section shall be construed as prohibiting  
21 the payment of commissions or other compensation to duly  
22 licensed agents, brokers and solicitors, nor as prohibiting  
23 any insurer from allowing or returning to its participating  
24 policyholders, members or subscribers, dividends, savings  
25 or unabsorbed premium deposits. As used in this section  
26 the word "insurance" includes suretyship and the word  
27 "policy" includes bond.

28 Sections eighteen, nineteen and twenty, inclusive, of  
29 article two of this chapter shall not apply to any kind of  
30 insurance subject to the provisions of this article.

Sec. 18. *Penalties.*—Any person or organization violat-  
2 ing any provision of this article shall, upon conviction,  
3 be subject to a penalty of not more than fifty dollars for  
4 each such violation, but if such violation is found to be  
5 willful, the penalty may be not more than five hundred  
6 dollars for each such violation. Such penalties may be in  
7 addition to any other penalty provided by law.

8 The commissioner may suspend the license of any  
9 rating organization or insurer which fails to comply  
10 with an order of the commissioner within the time lim-  
11 ited by such order, or any extension thereof which the  
12 commissioner may grant. The commissioner shall not  
13 suspend the license of any rating organization or insurer  
14 for failure to comply with an order until the time pre-  
15 scribed for an appeal therefrom has expired or if an ap-  
16 peal has been taken, until such order has been affirmed.  
17 The commissioner may determine when a suspension of  
18 license shall become effective and it shall remain in ef-  
19 fect for the period fixed by him, unless he modifies or  
20 rescinds such suspension, or until the order upon which  
21 such suspension is based is modified, rescinded or reversed.

22 No license shall be suspended or revoked except upon

23 a written order of the commissioner, stating his findings,  
24 made after a hearing held upon not less than ten days'  
25 written notice to such person or organization specifying  
26 the alleged violation.

Sec. 19. *Hearing Procedure and Judicial Review.*—(a)

2 Any insurer or rating organization aggrieved by any  
3 order or decision of the commissioner made without a  
4 hearing may, within thirty days after notice of the order  
5 to the insurer or organization, make written request to  
6 the commissioner for a hearing thereon. The commis-  
7 sioner shall hear such party or parties within twenty  
8 days after receipt of such request and shall give not less  
9 than ten days' written notice of the time and place of  
10 the hearing. Within fifteen days after such hearing the  
11 commissioner shall affirm, reverse or modify his previous  
12 action, specifying his reasons therefor. Pending such  
13 hearing and decision thereon the commissioner may sus-  
14 pend or postpone the effective date of his previous ac-  
15 tion.

16 (b) Nothing contained in this article shall require the  
17 observance at any hearing of formal rules of pleading or  
18 evidence.

19 (c) In the event that any party in interest is dissatis-  
20 fied with any decision or order of the commissioner he  
21 or it may, within thirty days after the entry thereof,  
22 file a petition to the circuit court of Kanawha county,  
23 or to the judge thereof in vacation, for the review of  
24 such order. Before presenting his or its petition to the  
25 court or judge, the petitioner shall mail a copy thereof  
26 to the insurance commissioner. Upon the receipt of such  
27 copy, the insurance commissioner shall forthwith trans-  
28 mit to the clerk of such court the record of the proceed-  
29 ings before him. The court or judge shall fix a time for  
30 the review of said proceedings at his earliest convenience.  
31 Notice in writing of the time and place of such hearing  
32 shall be given to the insurance commissioner at least ten  
33 days before the date set therefor. The court or judge  
34 shall, without a jury, hear and determine the case upon  
35 the record of the proceedings before the insurance com-

36 missioner. The court or judge may enter an order re-  
37 vising or reversing the decision of the insurance com-  
38 missioner, if it appears that the decision is clearly wrong,  
39 or may affirm such decision. The judgment of the circuit  
40 court or judge may be reviewed upon appeal in the su-  
41 preme court of appeals. Pending such review the order  
42 of the commissioner shall be in full force and effect until  
43 final determination, unless the court, or the judge thereof  
44 sitting in vacation, before whom such review is pending,  
45 shall enter an order staying the effect of the order or  
46 decision of the commissioner until final determination  
47 by the court. The court may, in disposing of the issue  
48 before it, modify, affirm or reverse the decision or order  
49 of the commissioner in whole or in part.

Sec. 20. *Laws Repealed.*—All other laws or parts of  
2 laws inconsistent with the provisions of this article are  
3 hereby repealed.

Sec. 21. *Constitutionality.*—If any section, subsection,  
2 subdivision, paragraph, sentence or clause of this article  
3 is held invalid or unconstitutional, such decision shall not  
4 affect the remaining portions of this article.

## CHAPTER 77

(Senate Bill No. 166—By Mr. Love)

AN ACT to amend and reenact sections one and eleven, article  
seventeen, chapter fifty of the code of West Virginia, one  
thousand nine hundred thirty-one, as last amended, re-  
lating to fees of justices in civil and criminal cases.

[Passed March 12, 1949; in effect ninety days from passage. Approved by  
the Governor.]

### Article 17. Fees, Fines and Costs.

#### Section

1. Fees of justices in civil cases.
11. Fees of justices in criminal cases.



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

That sections one and eleven, article seventeen, chapter fifty 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. <i>Fees of Justices in Civil Cases.</i> —A justice of	
the peace shall charge and shall collect in advance from	
the party or parties requesting such services the follow-	
ing fees:	
(1) For entering suit and issuing summons not to	
exceed two, docketing the cases, indexing and	
filing papers, receiving confessions of judgment	
or rendering judgment by default and entering	
same together with satisfaction on docket, in-	
cluding the taxing of justice's and constable's	
costs .....	\$3.50
(2) For each summons in excess of two .....	.25
(3) For each subpoena issued .....	.25
(4) For swearing each witness, arbitrators or party ..	.15
(5) For appointing special constables at request of	
either party .....	.25
(6) For trying cases (defense interposed), and en-	
tering judgment and satisfaction .....	1.50
(7) For issuing order of attachment or suggestion	
order and necessary copies thereof, executing	
affidavit and bond in addition to item No. 1 .....	1.00
(8) For each additional attachment to recover on	
original judgment, executing affidavit and bond,	
in addition to item No. 1 .....	1.00
(9) For issuing second summons together with cop-	
ies thereof, for nonresidents as provided by sec-	
tion ten, article nine of this chapter .....	.75
(10) For issuing civil order of arrest or order of com-	
mitment, civil cases .....	.50
(11) For trial and judgment of any case of contempt ..	1.50
(12) For taking and certifying any affidavit in writ-	
ing, except to commence suit .....	.50
(13) For each continuance .....	.50
(14) For settling and allowing interrogatories .....	.50
(15) For entering agreement for arbitration .....	.50

36	(16) For summons of arbitrators .....	.30
37	(17) For each bond filed in a case, appeal bond, stay-	
38	of-execution bond, bail bond, civil order of ar-	
39	rest, detinue bond, except bond in attachment	
40	case and docketing same .....	1.00
41	(18) For ordering a jury, including the drawing of	
42	same .....	.50
43	(19) For abstract of judgment for docketing in the	
44	office of the clerk of the county court .....	.50
45	(20) For issuing execution and entering return there-	
46	of on docket .....	.50
47	(21) For entering stay of execution .....	.25
48	(22) For trying right of property levied on or at-	
49	tached .....	1.50
50	(23) For transcript from docket .....	1.00
51	(24) For transmitting or delivering papers to the	
52	clerk of the circuit court in case of appeal .....	.50
53	(25) For taking and certifying acknowledgment of	
54	deed or other instrument of writing .....	.50
55	(26) For taking depositions of witnesses if done in	
56	an hour or less .....	1.00
57	(27) If not completed in an hour, for additional time	
58	at the rate, per hour of .....	1.00
59	(28) For appointing a guardian for the suit of an in-	
60	fant plaintiff or defendant .....	.50
61	(29) For taking an inquest on a dead body, to be aud-	
62	ited and paid from the treasury of the county ...	5.00
63	(30) For each distress warrant issued, docketing the	
64	case and indexing and filing papers .....	1.00
65	(31) For each suggestee execution issued, docketing	
66	and indexing same .....	1.50
67	(32) For mailing each suggestee execution by reg-	
68	istered mail and return receipt requested .....	.35
69	(33) For each renewal of suggestee execution issued	
70	docketing and indexing same .....	1.50
71	(34) For issuing each temporary release, modifying	
72	order or permanent release .....	.50
73	(35) Order of appraisalment, appointing appraisers,	
74	swearing of the same and docketing same, to be	
75	paid by plaintiff .....	1.00
76	(36) <i>Provided, however, That in an action brought</i>	

77 before a justice to recover a sum of money  
 78 where an attachment, garnishment, suggestion  
 79 order or suggestee execution is issued against  
 80 the wages of a defendant and the claim is not  
 81 contested, the maximum total for covering all  
 82 costs to be charged by the justice in each case  
 83 shall not exceed \$5.50, and if the claim is con-  
 84 tested, the maximum total fee covering all costs  
 85 to be charged by the justice shall not exceed..... 7.00

Sec. 11. *Fees of Justices in Criminal Cases.*—(1) Every  
 2 justice shall be entitled to a fee of three dollars and fifty  
 3 cents in each criminal case and proceeding before him,  
 4 which fee shall constitute his compensation for all official  
 5 services performed by him in connection with any single  
 6 case, including affidavit for warrant, search and seizure  
 7 warrant, warrant for arrest, trial examination, issuing sub-  
 8 poenas and copies thereof, warrant summoning and swear-  
 9 ing a jury when required, swearing and certifying at-  
 10 tendance of witnesses, entering judgment and taxing costs  
 11 and all other acts in connection herewith except, that he  
 12 shall be allowed an additional fee of fifty cents for making  
 13 and certifying a transcript of his docket in any particular  
 14 case and transmitting the same to the clerk of the circuit  
 15 court, the state road commission, or any other office in  
 16 which he may be by law required to certify such tran-  
 17 script, and two dollars for bond recognizance, to be paid by  
 18 defendant. And no other fees shall be taxed or charged by  
 19 any justice in such cases and proceedings: *Provided, how-*  
 20 *ever,* That under the provisions of this section the justice  
 21 shall be entitled to such fees theretofore earned, as were  
 22 authorized by law at the time such fees were earned, and  
 23 the prosecuting attorneys and county courts may approve  
 24 and pay such accrued costs in the same manner as was  
 25 provided by the code of West Virginia, one thousand nine  
 26 hundred thirty-one, prior to the enactment of chapters  
 27 thirty-one and thirty-two, acts of the Legislature, regu-  
 28 lar session, one thousand nine hundred thirty-five.  
 29 (2) For issuing sheep warrant, appointing and swear-  
 30 ing appraisers and docketing same ..... 1.00  
 31 (3) Bond or recognizance ..... 2.00

## CHAPTER 78

(Senate Bill No. 126—By Mr. Wylie)

AN ACT to amend and reenact chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting sections one and two, article one; by amending and reenacting sections one and two, article two; and by repealing section seven of said article two; by amending the caption to article three and by amending and reenacting sections one, two, three, four, five, six, seven, eight, nine, ten, twelve and thirteen of said article three; by amending and reenacting sections one, three, three-c, five, six, eight and nine, and by repealing sections three-a and three-b of article four; by amending the caption of article five; by amending the caption of article six, and by amending and reenacting sections one and two of said article six; by amending and reenacting section one, article seven; by amending and reenacting sections one and three, article eight; by amending and reenacting sections one, two, three and five, of article nine; by amending and reenacting section one, article ten; all relating to mentally diseased persons.

[Passed March 12, 1949; in effect July 1, 1949. Approved by the Governor.]

### CHAPTER 27. MENTALLY DISEASED PERSONS.

#### Article

1. Definitions.
2. State Hospitals.
3. Determination of Mental Disease; Commitment.
4. Patients in Hospitals; Restoration to Sanity and Discharge.
5. Maintenance of Certain Mentally Diseased Patients.
6. Mentally Diseased Persons in County Jails.
7. Private Hospitals.
8. West Virginia Training School.
9. Committees; Disposition of Property.
10. Offenses.

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

That chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted by amending and reenacting sections one and two, article one; by amending and reenacting sections one and two, article two; and by repealing section seven of said article two;

by amending the caption to article three and by amending and reenacting sections one, two, three, four, five, six, seven, eight, nine, ten, twelve and thirteen of said article three; by amending and reenacting sections three, three-c, five, six, eight and nine, and by repealing sections three-a and three-b of article four; by amending the caption of article five; by amending the caption of article six, and by amending and reenacting sections one and two of said article six; by amending and reenacting section one, article seven; by amending and reenacting sections one and three, article eight; by amending and reenacting sections one, two, three and five, article nine; by amending and reenacting section one, article ten, all to read as follows:

### **Article 1. Definitions.**

#### **Section**

1. What the words "mentally diseased" to include.
2. Resident of state and county.

Section 1. *What the Words "Mentally Diseased" to Include.*—The words "mentally diseased", whenever they occur in this code, shall be construed as referring to any person who is mentally ill, feeble-minded, or epileptic. Whenever the terms "lunatic", "idiot", "imbecile", "mental defective", "insane", "moron", "senile dementia", "non compos", "deranged", "dotards", "mentally ill", or words of like import are used throughout this code, they shall be interpreted to mean persons mentally diseased.

Sec. 2. *Resident of State and County.*—For the purpose of this chapter no person shall be considered a resident of this state unless he is a citizen of the United States and has been a bona fide resident of this state for at least one year, and was not mentally diseased when he came into this state; and no person shall be considered a resident of a county who is not a resident of the state, as above defined, and who has not been a resident of the county for at least sixty days, and was not mentally diseased when he came to the county.

### **Article 2. State Hospitals.**

#### **Section**

1. Locations; continuation; management.
2. Segregation of races.

Section 1. *Locations; Continuation; Management.*—The state hospitals for the mentally diseased, heretofore es-

3 tablished at Weston, Spencer, Huntington, and Lakin  
4 shall be continued and known respectively, as the Weston  
5 state hospital, Spencer state hospital, Huntington state  
6 hospital, and Lakin state hospital, and there is hereby es-  
7 tablished another and new hospital, for the mentally dis-  
8 eased at Barboursville, Cabell county, which shall be  
9 known as the Barboursville state hospital. Said hospitals  
10 shall be managed, directed and controlled as prescribed  
11 in article one, chapter twenty-five of the code, and further  
12 as provided in this chapter.

Sec. 2. *Segregation of Races.*—The Weston, Spencer,  
2 Huntington, and Barboursville state hospitals shall be  
3 used for the care and treatment of white persons, and the  
4 Lakin state hospital shall be used for the care and treat-  
5 ment of colored persons.

### **Article 3. Determination of Mental Disease; Commitment.**

#### **Section**

1. County mental hygiene commission.
2. Meetings.
3. How proceedings originated; complaint; warrant.
4. Guardian ad litem for suspected person.
5. Witnesses; physicians; evidence to be reduced to writing.
6. Hearing; disposition of mentally diseased person.
7. Disposition of mentally diseased person who is nonresident of county; expenses.
8. Commission to inquire into residence.
9. Arrangements preparatory to transfer of mentally diseased person to hospital; expenses of commitment and transfer.
10. Compensation of physicians, witnesses and others.
12. When officer not to be compensated for transfer to hospital.
13. How and when circuit court to inquire into a person's sanity.

Section 1. *County Mental Hygiene Commission.*—There  
2 shall be in each county a mental hygiene commission of  
3 three members, to be composed of any member of the  
4 county court, the prosecuting attorney and/or an assistant  
5 prosecuting attorney so designated by the prosecuting  
6 attorney and approved by the county court, and the clerk  
7 of the county court and/or a deputy clerk so designated  
8 by the clerk of the county court and approved by the  
9 county court, who shall serve as such without compensa-  
10 tion, except for traveling or other necessary expenses in-  
11 curred in the discharge of their duties as members of the  
12 commission, which expenses shall be audited by the  
13 county court and paid out of the county treasury. A mem-

14 ber of the county court shall be the chairman of the com-  
15 mission. In the absence of a county court member, the  
16 prosecuting attorney and/or his designated assistant as  
17 herein provided, shall act as such chairman. The clerk of  
18 the county court and/or his designated deputy shall be the  
19 clerk of the commission and shall keep in a proper book  
20 provided for the purpose a full and careful record of all  
21 the acts, orders and resolutions of the commission. Any  
22 two members from different offices represented on the  
23 commission shall be a quorum thereof. The county court  
24 of each county shall at its first term of court of each year  
25 enter an order designating the persons eligible to sit as  
26 members of the county mental hygiene commission.

2     Sec. 2 *Meetings.*—All meetings of the commission shall  
3 be held at the county seat, unless it shall be thought best  
4 by the commission to meet at some other place, as in the  
5 case of a mentally diseased person whose condition makes  
6 it advisable to meet at or near his residence.

2     Sec. 3. *How Proceedings Originated; Complaint; War-*  
3 *rant.*—If any resident of the county reasonably suspect  
4 any person therein to be mentally diseased, he may make  
5 complaint under oath to the clerk of the county court,  
6 giving such information and stating such facts therein as  
7 may be required, and deliver the same to the clerk of the  
8 county court, whose duty it shall be to issue a warrant  
9 ordering the person suspected and named in such com-  
10 plaint to be brought before the commission at a time and  
11 place named therein that his mental condition may be in-  
12 quired into. If the clerk of the county court does not deem  
13 such suspicion to be reasonable, he may require such  
14 complainant to furnish the certificate of a reputable phy-  
15 sician showing the suspected person's condition, before  
16 issuing a warrant. Any member of the commission with-  
17 out such complaint may have such warrant issued for any  
18 person found in his county, whom he shall suspect to be  
19 mentally diseased. All such warrants shall be signed by  
20 the clerk of the county court and have impressed thereon  
21 the seal thereof; and may be addressed to the sheriff of  
22 the county or to any constable of any district thereof, or  
23 to a special constable appointed for the purpose and named

23 therein; but if any relative or friend of the person so  
24 suspected will serve such warrant and cause such suspect-  
25 ed person to be brought before the commission, he may be  
26 allowed to do so. The officer or person to whom the war-  
27 rant is addressed shall take the suspected person into  
28 custody and bring him before the commission at the time  
29 and place named therein.

30 Whenever a person apparently mentally diseased is so  
31 violent as to endanger his own safety or the safety of  
32 others, any law-enforcement officer may, with or without  
33 a warrant, take such person into protective custody.

Sec. 4. *Guardian ad Litem for Suspected Person.*—Be-  
2 fore proceeding with the hearing of the matter, the com-  
3 mission shall appoint a guardian ad litem, who shall be a  
4 competent attorney, for such suspected person, and such  
5 guardian shall be present at the hearing and manage the  
6 case on behalf of the person suspected. Such attorney  
7 shall be paid by the county court. Such suspected person  
8 and his counsel shall have the right to cross examine any  
9 witnesses.

Sec. 5. *Witnesses; Physicians; Evidence to be Reduced*  
2 *to Writing.*—Among the witnesses there shall be included  
3 two reputable physicians, duly authorized to practice  
4 medicine in this state, who shall separately or together,  
5 make a physical and mental examination of the suspected  
6 person, and each physician shall make out a certificate of  
7 the result of such examination in the form required by  
8 the board of control, which certificate shall be signed and  
9 sworn to by each physician and shall be considered as  
10 evidence by the commission. Not more than one phy-  
11 sician of any firm or association of physicians practicing  
12 medicine together, shall sign any such certificate respect-  
13 ing the mental or body condition of any person suspected  
14 of being mentally diseased.

Sec. 6. *Hearing; Disposition of Mentally Diseased Per-*  
2 *son.*—If the commission finds as a result of the hearing  
3 that the person suspected is a mentally diseased person  
4 and should be confined in a hospital, and that he is not a  
5 resident of another county of this state, it shall order him  
6 to be committed to the nearest state hospital unless some



7 relative or friend of such person will agree to take care of  
8 him, in which case the commission may deliver him to  
9 such person, and take from such relative or friend a bond  
10 in the penalty of at least five hundred dollars, with suf-  
11 ficient security, to be approved by the commission, payable  
12 to the state of West Virginia, with condition to restrain  
13 and take proper care of such mentally diseased person  
14 until the cause of confinement shall cease, or until he is  
15 delivered to the commission to be proceeded with accord-  
16 ing to law; but if the person found to be a mentally dis-  
17 eased person is not dangerous to himself or to the lives or  
18 property of others, or is found harmless and incurable, he  
19 may be delivered to any relative or friend who will agree  
20 to take proper care of him, without such bond, if in the  
21 judgment of the commission in any case the same may be  
22 proper.

Sec. 7. *Disposition of Mentally Diseased Person Who*  
2 *is Nonresident of County; Expenses.*—If a person found to  
3 be mentally diseased by the commission is a resident of  
4 another county of this state, a transcript of the evidence  
5 adduced at the hearing of such person, properly certified  
6 by the clerk of the county court, shall be forthwith for-  
7 warded to the clerk of the county court of the county of  
8 which such person is a resident, who shall immediately  
9 present such transcript to the mental hygiene commission  
10 of said county. Such commission shall give full faith and  
11 credit to the evidence contained in such transcript, and, if  
12 satisfied that such person is mentally diseased, shall order  
13 the person to be committed to one of the state hospitals  
14 for the mentally diseased, as though the person had been  
15 brought before it in the first instance. This order shall  
16 be transmitted forthwith to the county clerk of the county  
17 in which the examination was held, who shall execute said  
18 order promptly. All expenses incurred in this proceeding,  
19 as well as for the hospitalization of the mentally diseased  
20 person, shall be borne by the county of which he is a  
21 resident.

Sec. 8. *Commission to Inquire into Residence.*—In the  
2 examination of a person before them, suspected of being  
3 mentally diseased, the county mental hygiene commis-

4 sion, if it appear that he is not a resident of this state,  
5 shall make diligent inquiry to ascertain his residence,  
6 and if it be ascertained that he is a resident of another  
7 state, the clerk of the mental hygiene commission shall  
8 immediately inform the board of control, which shall  
9 thereupon instruct said clerk what disposition is to be  
10 made of the suspected person.

Sec. 9. *Arrangements Preparatory to Transfer of Mentally Diseased Person to Hospital; Expenses of Commitment and Transfer.*—When a person has been committed to a hospital as hereinbefore provided, the clerk of the commission shall immediately communicate with the superintendent of the proper hospital, and forward to him the commitment papers. In the meantime the commission may deliver such mentally diseased person into the custody of the sheriff for safe keeping until he is taken to the hospital, or may provide for his safe keeping for such time by any relative or friend who may agree to do so, upon such terms as may be agreed upon. No such mentally diseased person shall be confined in any jail, lockup, or other similar place, unless by reason of his violent or dangerous condition the same shall be necessary; and it shall be the duty of the commission to have all such persons admitted to a hospital where they can receive proper treatment, as speedily as possible. In any case the clerk of the county court may communicate with the superintendent of the hospital by telegraph or telephone. All expenses incurred in the arrest, hearing, and transportation of any mentally diseased person to a hospital, including any such telegraphing or telephoning, shall be certified to the county court by the clerk thereof, and shall be paid out of the county treasury.

Sec. 10. *Compensation of Physicians, Witnesses and Others.*—The county court of any county may contract with two or more competent physicians respecting the compensation to be paid to them for their services in examining mentally diseased persons and other persons brought before the mental hygiene commission of the county, the county court, or the circuit court, or con-

8 fined in jail. The compensation of physicians, of all wit-  
9 nesses, and of all other persons and officers whose com-  
10 pensation is not fixed in this chapter or by any other  
11 law, employed in examination of such persons, or for  
12 their care and maintenance, or for other services in  
13 connection therewith, unless the same shall have been  
14 agreed upon before or at the time such service was per-  
15 formed, or is fixed by law, shall be such as may be pre-  
16 scribed by the county court of the county, and shall be  
17 paid out of the county treasury.

Sec. 12. *When Officer Not to Be Compensated for Trans-  
2 fer to Hospital.*—No officer shall be allowed anything for  
3 carrying a mentally diseased person or other person to  
4 or from a hospital, whether for himself, his guard, or  
5 the mentally diseased person, unless he shall have previ-  
6 ously ascertained that there is room therein for such  
7 mentally diseased person.

Sec. 13. *How and When Circuit Court to Inquire into a  
2 Person's Sanity.*—If a person residing in this state be  
3 suspected to be mentally diseased but has not been  
4 found to be a mentally diseased person by the county  
5 mental hygiene commission, the circuit court of the  
6 county of which such person is an inhabitant shall, upon  
7 the application of any person interested, and after five  
8 days' notice to the person suspected, proceed to examine  
9 into his state of mind, and if satisfied that he is a men-  
10 tally diseased person, shall so find. If a person residing  
11 out of this state, but having property herein, be suspected  
12 to be a mentally diseased person, the circuit court of  
13 the county wherein the property or a greater part of it is  
14 shall, upon like application and being satisfied that he  
15 is a mentally diseased person, so find. Such finding, in  
16 either case, shall be authority for the appointment of a  
17 committee for such person by the county court.

#### **Article 4. Patients In Hospitals; Restoration To Sanity And Discharge.**

##### **Section**

1. Admission to hospital of committed persons.
3. Voluntary admission.
- 3-c. Report of admissions; registration by the board of control.
5. Commitment and admission of criminal mentally diseased person.

6. Disposition of mentally diseased person who is nonresident of state.
8. Return of criminal mentally diseased person upon restoration.
9. Discharge by court proceedings of persons unlawfully detained.

Section 1. *Admission to Hospital of Committed Persons.*

2 —The superintendent of the hospital to whom application  
3 is made as hereinbefore provided, shall, on receipt of  
4 such application, carefully consider the same, and if he  
5 be of the opinion that the person named is a proper one  
6 to be admitted to his institution, and there is room for  
7 him therein, he shall, without delay, cause such person  
8 to be brought to his hospital by one of the attendants  
9 thereof, the actual expenses whereof shall be paid out  
10 of the proper fund of the hospital, and repaid to the  
11 state by the county as hereinafter provided. If there  
12 be no room in the hospital to which the application is  
13 made, the superintendent thereof shall immediately com-  
14 municate the fact to the board of control, which he may  
15 do when deemed necessary by telegraph or telephone,  
16 and transmit the commitment papers to the board of  
17 control, whose duty it shall be to ascertain whether there  
18 is room in any one of the other hospitals, and if there is,  
19 to cause such person to be admitted thereto, and the  
20 superintendent thereof to send an attendant for such  
21 person: *Provided*, That any reputable and trustworthy  
22 relative or friend of such person may be allowed by the  
23 county mental hygiene commission to deliver him to the  
24 hospital, if such relative or friend will do so without  
25 expense to the county or state.

Sec. 3. *Voluntary Admission.*—Any person, a resident  
2 of this state, who desires the benefit of institutional  
3 treatment, may be admitted to one of the state mental  
4 hospitals on his own written application, or upon the  
5 application of a reputable physician, providing such  
6 person is willing to enter the hospital. Such admissions  
7 shall be subject to the rules and regulations of the board  
8 of control. Such a voluntary patient may at any time  
9 request his discharge by giving to the superintendent  
10 notice in writing of his desire to leave. The superin-  
11 tendent shall, within fifteen days after the receipt of  
12 this notice, grant the request unless upon examination,

13 as provided in section two of this article, the examining  
14 board has determined that the patient is mentally dis-  
15 eased and requires further hospitalization. If such de-  
16 termination is made the examining board shall forthwith  
17 forward to the clerk of the county court of the county  
18 in which such a person is a resident, a detailed report  
19 of their examination, on forms provided by the board  
20 of control, which report shall immediately be presented  
21 to the mental hygiene commission of said county. Such  
22 commission shall give full faith and credit to this report,  
23 and if satisfied that such person is mentally diseased,  
24 shall issue an order legally committing the mentally  
25 diseased person to the hospital making the report, as  
26 though the person had been brought before it. All ex-  
27 penses incurred in this proceeding, as well as the hos-  
28 pitalization of the mentally diseased person, shall be  
29 borne by the county of which he is a resident.

Sec. 3-c. *Report of Admissions; Registration by the*  
2 *Board of Control.*—The superintendent of each state men-  
3 tal institution shall, within ten days after the admission  
4 of any patient, report the admission to the board of con-  
5 trol together with any other information the board of  
6 control may require. A copy of said report shall be  
7 sent to the state health commissioner. He shall make a  
8 similar report of the discharge or death of any patient.  
9 From such reports and other sources the board shall  
10 prepare and keep current a register of persons in this  
11 state who are suffering from mental disease.

12 The name of a person so registered shall not be made  
13 public nor shall the register be accessible to anyone  
14 except by order of the board of control or by order of  
15 the judge of a court of record.

Sec. 5. *Commitment and Admission of Criminal Men-*  
2 *tally Diseased Person.*—If any person charged with or  
3 convicted of crime be found, in the court before which  
4 he is so charged or was convicted, to be mentally dis-  
5 eased, and if such court shall order him to be confined  
6 in one of the state hospitals, he shall be received and con-  
7 fined in it if there be room therein for him. The sheriff  
8 or other officer of the court by which the order is made

9 shall immediately proceed in the manner directed by  
10 section seven, article four of this chapter, to ascertain  
11 whether such vacancy exists in a state hospital; and  
12 until it is ascertained that there is a vacancy, such person  
13 shall be kept in the jail of the county of such court.

Sec. 6. *Disposition of Mentally Diseased Person*  
2 *Who Is Nonresident of State.*—When a person who is a  
3 nonresident of the state is committed to, or detained as  
4 an inmate of, a state hospital, the superintendent thereof  
5 shall immediately report the fact to the board of con-  
6 trol. The board shall take proper steps to cause such  
7 person to be deported, if an alien; or, if otherwise a non-  
8 resident of this state, to be taken to the state, territory  
9 or place of his residence and delivered to the proper  
10 authorities thereof.

Sec. 8. *Return of Criminal Mentally Diseased Person*  
2 *Upon Restoration.*—When any person confined in a state  
3 hospital charged with crime and subject to be tried  
4 therefor, or convicted of crime and subject to be pun-  
5 ished therefor, shall be restored to sanity, the superin-  
6 tendent shall give notice thereof to the clerk of the  
7 court by whose order he was confined, and deliver him  
8 to the proper officer upon the order of the court.

Sec. 9. *Discharge by Court Proceedings of Persons Un-*  
2 *lawfully Detained.*—Any person who has been found  
3 mentally diseased by a county mental hygiene commis-  
4 sion or any other board or tribunal other than a circuit  
5 court, and any person who is confined in any hospital  
6 or other place of confinement or otherwise restrained of  
7 his liberty in violation of law, or a patient who has  
8 been restored to sanity and to whom the superintendent  
9 of the hospital refuses to give a certificate of restoration  
10 and discharge, may present his petition, or any relative  
11 or friend may present a petition in his behalf, to the  
12 circuit court of the county in which the hospital is lo-  
13 cated in case of a patient denied the certificate of restora-  
14 tion, and in other cases to the circuit court of the county  
15 in which the person is confined or is in custody, stating  
16 facts. The courts shall treat such petition as an appli-  
17 cation for a writ of habeas corpus, so far as applicable

18 and necessary, and cause such process to issue as the  
19 court may deem proper, and fix a time for the hearing of  
20 the case, which may be heard by the court either with or  
21 without a jury, as the court may order; and if the per-  
22 son is found sane, or it is found that he is held in custody  
23 in violation of law, he shall be discharged. In cases of  
24 patients who have been denied certificates of restoration  
25 and discharge by the superintendent of a hospital, or in  
26 which it is alleged that a patient is held in custody il-  
27 legally in any state hospital, the superintendent shall  
28 have at least five days' notice of the time and place of  
29 the trial in the circuit court. In all such cases the prose-  
30 cuting attorney shall represent the sheriff or other  
31 county officer or the commission who shall be a de-  
32 fendant in such proceedings; and the attorney general  
33 shall represent the superintendent of any hospital who  
34 is a defendant. In case the decision shall be against the  
35 applicant, he or his bondsman (if any), or the person  
36 signing the petition, shall pay the costs of the proceed-  
37 ings. In any case in which a court may find a person  
38 sane upon an inquest or trial respecting his sanity, he  
39 shall be discharged and be entitled to a certified copy  
40 of the order of the court made in the case. Nothing in  
41 this section shall be construed as applying to patients  
42 charged with or convicted of crime.

#### **Article 5. Maintenance of Certain Mentally Diseased Patients.**

#### **Article 6. Mentally Diseased Persons in County Jails.**

##### **Section**

1. Report to county court; provision for maintenance; when not to be paid to jailer.
2. How discharge of such mentally diseased person obtained.

Section 1. *Report to County Court; Provision for Main-  
tenance; When Not to be Paid to Jailer.*—When any per-  
son is confined in any jail as a mentally diseased person,  
the jailer shall certify the fact to the county court of the  
county at the next ensuing term, and the court shall then  
make such provision for the care and maintenance of such  
person, while in jail as it may deem proper: *Provided,*  
*however,* That the allowance to the jailer for such care  
and maintenance shall not exceed one dollar per day, ex-  
cept in special and extraordinary cases when the court

11 may allow a larger sum. A reasonable allowance may be  
12 made for clothing for such person. No such allowances  
13 shall be ordered or paid, unless it appear in the certificate  
14 that the jailer proved to the court that, immediately after  
15 the commitment of such person, and at least once in each  
16 ten days thereafter, application was made to a state hos-  
17 pital for admission, and that such application was refused  
18 for want of room, or that applications were not continued  
19 because the admission of such person had been refused  
20 for some other cause than want of room, and unless it  
21 further appears in such certificate that the jailer made  
22 report in due time to the county court of the county, as  
23 provided, in the first part of this section.

Sec. 2. *How Discharge of Such Mentally Diseased Per-  
2 son Obtained.*—If any reputable person present to the  
3 clerk of the county court of a county wherein a person is  
4 confined as a mentally diseased person, other than one  
5 charged with or convicted of crime, or other than one  
6 confined in a state hospital, or a duly licensed private hos-  
7 pital, an application in writing for the discharge of such  
8 mentally diseased person on the ground that he has been  
9 restored to sanity, the mental hygiene commission for the  
10 county shall consider the same and may proceed to make  
11 an inquest upon such mentally diseased person as is pro-  
12 vided in article three of this chapter. If the commission  
13 find that such person has been restored to sanity, they  
14 shall set him at liberty, if they have authority to do so;  
15 and if they have not such authority, they shall give a  
16 certificate of their finding to the person making the ap-  
17 plication, who may present it to the proper court.

## **Article 7. Private Hospitals.**

### **Section**

1. Permit from board of control; regulations.

#### **Section 1. Permit from Board of Control; Regulations.**

- 2 —No private hospital for the care and treatment of men-  
3 tally diseased persons for compensation shall be estab-  
4 lished unless a permit therefor shall be first obtained from  
5 the board of control. The application for such permit  
6 shall be accompanied by the plan of the premises to be  
7 occupied, and with such other data and facts as the board



8 may require. The board of control may make such terms  
9 and regulations in regard to the conduct of such hospital  
10 as it may think proper and necessary. The board of con-  
11 trol, or any member thereof, or any person authorized by  
12 the board to do so, shall have full authority to investigate  
13 and inspect such private hospital; and the board of con-  
14 trol may revoke the permit of any such hospital for good  
15 cause, after reasonable notice to the superintendent or  
16 other person in charge thereof.

### Article 8. West Virginia Training School.

#### Section

1. Management; superintendent.
3. Persons who may be admitted.

Section 1. *Management; Superintendent.*—For the  
2 treatment and training of mentally diseased persons there  
3 shall be a state institution to be known as the “West Vir-  
4 ginia Training School.” It shall belong to that class of  
5 institutions mentioned in section three, article one, chap-  
6 ter twenty-five of this code, and shall be managed and  
7 controlled as provided in said chapter, all the provisions  
8 whereof shall be applicable to said school except as in this  
9 article provided. The chief executive officer thereof shall  
10 be a superintendent, who shall be a legally qualified phy-  
11 sician, scientifically trained in mental medicine and of not  
12 less than five years’ experience in the treatment and care  
13 of mentally diseased persons, and who shall be appointed  
14 by the governor with the advice and consent of the senate.

Sec. 3. *Persons Who May Be Admitted.*—There shall  
2 be admitted to said school any person mentally diseased  
3 from birth or from an early age, so pronounced that he or  
4 she is unable to care for himself or herself and manage his  
5 or her affairs, with ordinary prudence, and who, because  
6 of such mental disease, is a menace to the happiness and  
7 welfare of himself or herself or of others in the com-  
8 munity, and requires care, training or control for the pro-  
9 tection of himself or herself or of others, and yet who is  
10 not mentally ill. This type of person is classed as feeble-  
11 minded, including idiots, imbeciles or morons. Should  
12 the school at any time not be able to accommodate all per-  
13 sons of such class offered for admission, preference in ad-

14 mission shall be given to children between the ages of  
15 seven and fourteen years, inclusive, of the moron type  
16 who are capable of being trained and of attending to their  
17 own ordinary physical needs. No person suffering from  
18 tuberculosis or leprosy shall be admitted, nor shall any  
19 deaf or blind person be admitted.

## Article 9. Committees; Disposition of Property.

### Section

1. To be appointed by county court.
2. Bond; refusal to act or failure to qualify; appointment of another; committal to sheriff.
3. Appraisement of estate.
5. Mortgage, lease or sale of realty.

Section 1. *To Be Appointed by County Court.*—When  
2 a person is found to be mentally diseased by any court or  
3 by the county mental hygiene commission, or is committed to a state hospital by the county court, the county  
4 court shall appoint a committee for him.

Sec. 2. *Bond; Refusal to Act or Failure to Qualify; Appointment of Another; Committal to Sheriff.*—The county  
2 court, when making the appointment of such committee,  
3 shall take from him a bond in such penalty and with such  
4 surety as it shall deem sufficient, with condition that the  
5 person so appointed will well and truly account for any  
6 (and) pay over to the person entitled thereto all property  
7 and moneys which may come into his hands by virtue of  
8 such appointment, and with such other conditions as the  
9 court may require. If any person so appointed as committee refuse the trust or shall fail for ten days succeeding  
10 his appointment to give bond as aforesaid, the court, on  
11 the motion of any party interested, or at its own instance,  
12 may appoint some other person as committee, taking from  
13 him bond as above provided, or may commit the estate of  
14 such mentally diseased person to the sheriff of the county,  
15 who shall act as such committee without giving any bond  
16 as such, and he and the sureties on his official bond shall  
17 be liable for the faithful performance of the trust.

Sec. 3. *Appraisement of Estate.*—The county court,  
2 whenever any committee is appointed for a mentally dis-

3 eased person, shall appoint appraisers and cause to be  
4 made, returned and recorded an appraisal of the  
5 property, both real and personal, of any such person in  
6 the same manner, to the same extent, within the same  
7 time, and subject to the same regulations and conditions  
8 as required by law for the estate of a deceased person.

Sec. 5. *Mortgage, Lease or Sale of Realty.*—If the per-  
2 sonal estate of such mentally diseased person be insuf-  
3 ficient for the discharge of his debts, or if such estate or  
4 the residue thereof after payment of the debts, and the  
5 rents and profits of his real estate, be insufficient for his  
6 maintenance and that of his family, if any, the commit-  
7 tee of such mentally diseased person may proceed, as pro-  
8 vided in article one, chapter thirty-seven, of this code, to  
9 obtain authority to mortgage, lease or sell so much of the  
10 real estate of such mentally diseased person as may be  
11 necessary for the purposes aforesaid, or any of them; set-  
12 ting forth in the bill or petition the particulars and the  
13 amount of the estate, real and personal, the application  
14 which may have been made of any personal estate, and  
15 an account of the debts and demands existing against the  
16 estate.

## Article 10. Offenses.

### Section

1. Malicious making of medical certificate or complaint as to sanity.

Section 1. *Malicious Making of Medical Certificate or*  
2 *Complaint as to Sanity.*—Any physician who shall sign  
3 a certificate respecting the sanity of any person without  
4 having made the examination as provided for by this  
5 chapter, or shall make any statement in any such certifi-  
6 cate maliciously for the purpose of having such person  
7 declared mentally diseased, and any person who shall  
8 maliciously make application to any mental hygiene com-  
9 mission or other tribunal for the purpose of having an-  
10 other person declared mentally diseased, shall be fined  
11 not exceeding five hundred dollars, or imprisoned not ex-  
12 ceeding one year, or both fined and imprisoned at the dis-  
13 cretion of the court.

## CHAPTER 79

(Com. Sub. for Senate Bill No. 110—Originating in the Senate Committee on Insurance)

AN ACT to repeal sections seventeen to twenty-two, inclusive, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four of such article; and to amend such article by adding thereto five new sections, to be designated sections four-a, four-b, four-c, four-d and four-e, all relating to the office of the state fire marshal and his powers and duties concerning fire prevention, the making of rules, orders and regulations with respect thereto, and the enforcement thereof.

[Passed March 12, 1949; in effect from passage. Approved by the Governor.]

### Article 3. State Fire Marshal; Protection Against Fire.

#### Section

4. Salary of fire marshal; employment of assistants and clerks; expenses.
- 4-a. Promulgation of rules and regulations; publication and notice thereof.
- 4-b. Orders of fire marshal; enforcement thereof; hearings, notice; review.
- 4-c. Enforcement in circuit court of fire marshal's orders; prosecuting attorney to represent fire marshal.
- 4-d. Certain municipalities exempt.
- 4-e. Separability; repeal.

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

That sections seventeen to twenty-two, inclusive, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section four of such article be amended and reenacted; and that such article be amended by adding thereto five new sections, to be designated sections four-a, four-b, four-c, four-d and four-e, to read as follows:

- Section 4. *Salary of Fire Marshal; Employment of Assistants and Clerks; Expenses.*—The state fire marshal shall receive such salary as may be fixed by the insurance commissioner and may employ a deputy fire marshal and such personnel as may be necessary for the orderly en-

6 enforcement of the provisions of this article and may incur  
7 such expenses as may be necessary in the performance of  
8 the duties of his office, including necessary traveling ex-  
9 penses, not to exceed such sums as may be paid into the  
10 state treasury in the manner hereinafter provided, or by  
11 appropriation or contribution.

Sec. 4-a. *Promulgation of Rules and Regulations; Pub-  
2 lication and Notice Thereof.*—The state fire marshal may  
3 adopt and promulgate such rules, orders and regulations  
4 as may be deemed necessary as safety precautions to guard  
5 against the loss of life and property by fire in connection  
6 with any of the following:

7 (1). The storage, transportation and use of combusti-  
8 bles, explosives, flammable liquids and liquefied petrole-  
9 um gases.

10 (2). The installation of electrical wiring, equipment  
11 and apparatus.

12 (3). The construction, maintenance and regulation of  
13 fire escapes.

14 (4). Construction and maintenance of ingresses, egres-  
15 ses, exits and fire escapes in asylums, hospitals, multiple  
16 residence properties, churches, schools, halls, theatres,  
17 night clubs, and all other public places where persons  
18 live or congregate from time to time for any purpose, in  
19 order to prevent fire and loss of life by fire in said build-  
20 ings.

21 (5). Instructing teachers of public and private schools  
22 and educational institutions on conducting at least two  
23 fire drills each month and keeping all doors and exits un-  
24 locked and unfastened during school hours.

25 (6). Regulating exits and egresses to school buildings,  
26 hotels, theatres and all other public buildings, except  
27 churches heretofore built, and mercantile establishments  
28 and other premises open to the general public and to  
29 which the general public has access.

30 (7). Require by proper order the demolition or con-  
31 demnation, repair or removal, of property which for want  
32 of repairs, or by reason of age, or dilapidated condition,  
33 or for any other cause is especially liable to fire or which  
34 may be so situated or constructed so as to endanger other  
35 buildings, property or lives.

36 (8). To issue regulations or orders requiring that any  
37 building or structure in this state of two or more stories  
38 in height operated, used or occupied as a hotel, apartment  
39 house or office building, is to be provided with one or more  
40 approved, suitable and substantial metallic fire escapes  
41 reaching from the top of the first story to the cornice and  
42 placed on the outside of the building, and, to require me-  
43 tallic balconies substantially attached to the building and  
44 to the fire escape at every story above the first in such  
45 number, size, capacity, design and locations as may be  
46 necessary to furnish reasonable means of escape to all  
47 persons in the building in case of fire.

48 (9). To subject to fire inspection as often as may be  
49 deemed necessary any building as described in paragraph  
50 eight of this section.

51 (10). To order and require the installation of adequate  
52 fire escapes or exits, or both, on any other building or  
53 structure, except private single family dwellings, which  
54 by reason of its construction, use, situation or occupancy  
55 is liable to cause loss of life in the event of destruction by  
56 fire.

57 (11). Prescribe protection, safe guards, or other means  
58 best adapted to render any public building inherently  
59 safe from the hazards of fire or the loss of life by fire as  
60 required by law, ordinance, or lawful orders.

61 Every general rule or regulation promulgated under au-  
62 thority of this section shall be given public notice by  
63 posting copies thereof in public places having facilities for  
64 the posting of notice and all other reasonable means shall  
65 be employed in disseminating and distributing copies of  
66 any such ruling to the owners of properties effected, in-  
67 cluding newspaper publication, radio announcement, or  
68 by advertisement.

2 Sec. 4-b. *Orders of Fire Marshal; Enforcement There-*  
3 *of; Hearings, Notice; Review.*—Whenever the fire marshal  
4 finds, upon investigation, that the owner of any property,  
5 or occupant of any structure or building has not complied  
6 with the rules and regulations promulgated in the man-  
7 ner provided by section four-a of this article or any statute  
or other provision of law as provided in this chapter re-

8 lating to fire prevention, he shall order, after due notice  
9 and hearing, that improvement or changes be made and  
10 such equipment be provided as will comply with said  
11 regulations or provision of law relating to fire prevention.  
12 The fire marshal shall fix the date upon which the said  
13 hearing shall be held in his office, and shall specify in the  
14 notice, by registered mail, the alleged violations of the  
15 regulations or provisions of the statute relating to fire  
16 prevention. Within a reasonable time after such hearing,  
17 the fire marshal shall enter his order in the premises and  
18 shall furnish such owner or occupant with certified copies  
19 of his order stating therein when his order shall take ef-  
20 fect or be complied with.

21 The action of the fire marshal, as set forth in his order  
22 hereinabove mentioned, shall be subject to review by the  
23 circuit court of the county within which such property  
24 is located. Petition for such review shall be filed by any  
25 person aggrieved by such order within a period of thirty  
26 days after the effective date of such order. The fire mar-  
27 shal shall forthwith file a copy of all records pertaining  
28 to such matter with the circuit court. An application to  
29 the supreme court of appeals of West Virginia for a writ of  
30 error from any final order of the circuit court in any  
31 such matter shall be made within thirty days from and  
32 after entry of such final order.

Sec. 4-c. *Enforcement in Circuit Court of Fire Mar-  
2 shal's Orders; Prosecuting Attorney to Represent Fire*  
3 *Marshal.*—When the fire marshal has issued an order in  
4 the manner provided in section four-a of this article, and  
5 the same has not been complied with within the time  
6 specified in said order, he shall have authority to proceed  
7 by proper petition in the circuit court of the county  
8 wherein the property is located for the purpose of com-  
9 pelling compliance with his order or the closing of the  
10 property in question, and the court shall have the au-  
11 thority to hear and decide such questions and grant in-  
12 junctions or other relief requested upon the evidence pro-  
13 duced at a hearing before the court. The prosecuting at-  
14 torney of the county in which the property is located shall  
15 represent the fire marshal in any such proceedings.

2       Sec. 4-d. *Certain Municipalities Exempt.*—The powers  
3 herein granted in sections four-a, four-b and four-c, shall  
4 not be exercised within any municipality which has  
5 adopted, or which shall hereafter upon the request of the  
6 fire marshal adopt, ordinances by which the fire chief or  
7 other appropriate municipal officer is given substantially  
8 the same powers contained in said sections four-a, four-b  
and four-c hereof.

2       Sec. 4-e. *Separability; Repeal.*—If any provision of this  
3 act, or the application thereof to any person or circum-  
4 stance is held invalid, the remainder of the act and the  
5 application of such provision to other persons or circum-  
stances shall not be affected thereby.

6       All acts or parts of acts which are inconsistent with the  
7 provisions of this act are hereby repealed.

## CHAPTER 80

(House Bill No. 262—By Mr. Cline)

AN ACT to amend and reenact section three, article five-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, relating to the receipts and expenditures of monies received by the state athletic commission.

[Passed March 4, 1949; in effect ninety days from passage. Approved by Governor.]

### Article 5-a. State Athletic Commission.

#### Section

3. Receipts and expenditures of moneys received by commission.

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

That section three, article five-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, be and the same is amended and reenacted so as to read as follows:

2       Section 3. *Receipts and Expenditures of Moneys Received by Commission.*—The commission shall retain out



3 of all money received by it, as hereinafter provided, such  
4 sum as shall cover all necessary traveling and other  
5 necessary expense of the members of the commission.  
6 All moneys so received by the commission in excess  
7 of three thousand five hundred dollars per annum shall  
8 be by the secretary of said commission paid over to the  
9 treasurer of the state of West Virginia, together with the  
10 full financial statement of all moneys received and ex-  
11 pended, and the secretary of the commission shall an-  
12 nually make report of the fiscal affairs of the commission  
13 for the preceding year to the treasurer of the state of  
14 West Virginia.

## CHAPTER 81

(House Bill No. 202—By Mr. Speaker, Mr. Flannery)

AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article eleven, relating to the creation of an agency for the receipt and distribution of surplus property.

Passed March 9, 1949; in effect from passage. Approved by the Governor.

### Article 11. Surplus Property Agency.

#### Section

1. Creation and authority of surplus property agency.

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

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

#### Section 1. *Creation and Authority of Surplus Property*

- 2 *Agency.*—There is hereby established an agency, to be  
3 known as the "State Agency for Surplus Property", with  
4 exclusive authority to receive from the secretary of the  
5 army, secretary of the navy, and secretary of the air force,  
6 or any other federal department, such equipment, mate-

7 rials, books, and other supplies as may be declared excess  
8 and surplus property. The property so obtained shall be  
9 distributed among such institutions and such county  
10 boards of education or other political subdivisions of the  
11 state as may be eligible therefor under federal laws or  
12 regulations. The state department of purchases is hereby  
13 designated as the sole agency for the purposes of this  
14 section, and the director of purchases may make such  
15 reasonable rules and regulations and may employ such  
16 persons as may be necessary for the accomplishment  
17 thereof.

—c—

## CHAPTER 82

(House Bill No. 144—By Mr. Powell, of Hampshire)

AN ACT to amend chapter eighty-one, acts of the Legislature, regular session, one thousand nine hundred forty-one, by adding thereto a new section, to be designated section one-a, relating to the establishment of the "Interstate Commission on the Potomac River Basin".

[Passed February 14, 1949; in effect ninety days from passage. Approved by the Governor.]

### Interstate Commission on Potomac River Basin.

#### Section

##### 1-a. Appointment of alternates.

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

That chapter eighty-one, acts of the Legislature, regular session, one thousand nine hundred forty-one, be amended by adding thereto a new section, to be designated section one-a, to read as follows:

Section 1-a. *Appointment of Alternates.*—The governor, by and with the consent of the senate, shall appoint an alternate member for the two members of the commission who are not ex officio, and each alternate shall have power to act in the absence of the person for whom he is alternate. The governor shall appoint the

- 7 first alternates hereunder on or before July first, one
- 8 thousand nine hundred forty-nine, the term of each al-
- 9 ternate to run concurrently with the term of the
- 10 member for whom he is alternate.

## CHAPTER 83

(House Bill No. 278—By Mr. Greenlee)

AN ACT to amend and reenact article two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, relating to the creation, alteration and dissolution of municipal corporations; and to amend and reenact sections one and two, article three, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, relating to the election of officers thereof.

[Passed March 11, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article

2. **Creation, Alteration and Dissolution of Municipal Corporations.**
3. **Election, Appointment and Qualification of Officers.**

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

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

### **Article 2. Creation, Alteration and Dissolution of Municipal Corporations.**

#### Section

1. Requirements for incorporation; territory; population.
2. Survey and map; verification.
3. Public examination of survey and map.
4. Notice of application for charter.
5. Publication of notice.
6. Application to county court.
7. Hearing on petition.
8. Census; verification.
9. Notice of election for incorporation.
10. Election for incorporation.

11. Certificate of incorporation.
12. Costs of incorporation.
13. Change of corporate boundary.
14. Council to certify change of boundary; order.
15. Forfeiture of charters, dissolution of municipal corporations.
16. Voluntary discontinuance of charters.
17. Appeals.

Section 1. *Requirements for Incorporation; Territory; Population.*—Any part of any district or districts not included within any incorporated municipality and containing a resident population of not less than one hundred persons, if such part shall include within its boundaries a territory of not less than one-quarter of one square mile and an amount of territory not disproportionate to the number of residents thereof (the exact extent of the territory to be included therein to be within the reasonable discretion of the county court granting the charter based on the reasonable benefits expected to be derived from such incorporation by the majority of the residents thereof), may be incorporated as a city, town or village, of any classification defined by section four, article one, chapter eight-a of the code, as enacted by section four, article one, chapter fifty-six, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, under the applicable provisions of this article.

Sec. 2. *Survey and Map; Verification.*—The persons intending to make application for the incorporation of such municipality shall cause an accurate survey and map of the territory intended to be embraced therein to be made by a practical surveyor. Such survey and map shall show the courses and distances of the boundaries thereof, and the amount of territory contained therein. The accuracy of such survey and map shall be verified by the affidavit of such surveyor annexed thereto.

Sec. 3. *Public Examination of Survey and Map.*—Such survey and map, when completed and verified as aforesaid, shall be left at the residence or place of business, within such territory, of some person residing therein, and shall be subject to examination at all reasonable hours, by every person interested in such application for the period of four weeks at least from the posting of first pub-

8 lication of the notice of such application, as hereinafter  
9 provided.

Sec. 4. *Notice of Application for Charter.*—The persons  
2 intending to make such application shall give notice that,  
3 on some day specified in such notice, they will apply by  
4 petition to the county court of the county in which such  
5 territory lies, or, if it lies in more than one county, to  
6 the county court of one of the counties to be named in  
7 such notice, for a certificate of incorporation of such ter-  
8 ritory as a city, town or village, by a name to be therein  
9 specified. Such notice shall describe the boundaries of  
10 such territory by courses and distances, and specify the  
11 district or districts in which it lies; and it shall state where  
12 such survey and map have been left for examination, as  
13 aforesaid.

Sec. 5. *Publication of Notice.*—If there be a newspaper  
2 printed within such territory, such notice shall be pub-  
3 lished in such newspaper once a week for three succes-  
4 sive weeks previous to the time specified therein for mak-  
5 ing such application; and, if there be no such paper, the  
6 notice shall be posted and kept posted in at least three  
7 of the most public places in such territory, for at least  
8 three weeks before the time so specified therein.

Sec. 6. *Application to County Court.*—Such application  
2 shall be made to the county court on the day specified  
3 in the aforesaid notice by petition to be subscribed by  
4 at least ten residents of the territory sought to be incor-  
5 porated. The petition shall set forth the boundaries of  
6 the territory, the quantity of land embraced therein, and  
7 the estimated population of the said territory. It shall  
8 have attached thereto a copy of the said survey and map  
9 of said territory, verified as aforesaid, a copy of the afore-  
10 said notice with the affidavit attached thereto of some  
11 credible person with knowledge thereof that said notice  
12 had been published as hereinbefore required and that  
13 public examination of the said survey and map had been  
14 afforded as required. The petition shall be verified by  
15 one or more of the petitioners.

Sec. 7. *Hearing on Petition.*—Upon the filing of said

2 petition with the court upon the day specified, the court  
3 shall proceed as expeditiously as possible to determine  
4 to its satisfaction that the amount of territory proposed  
5 to be incorporated is not disproportionate to the number  
6 of residents thereof; that the map and survey accurately  
7 show and describe the territory to be incorporated; that  
8 said map and survey were subject to examination in the  
9 manner and for the time hereinbefore prescribed; and  
10 that the requirements of this act have been fully com-  
11 plied with; and by its order shall appoint not less than  
12 two qualified persons to take a census of the inhabitants  
13 of said territory, as hereinafter provided, at a time to be  
14 specified in said order not exceeding thirty days from the  
15 entry thereof, and shall also specify a day not exceeding  
16 sixty days from the entry of said order, on which all the  
17 qualified voters residing within such territory will meet  
18 at a place to be named therein within the hours named  
19 therein, to vote upon the question of such incorporation.  
20 Not less than three commissioners of election to be named  
21 by the court in said order, shall preside over such election  
22 and make return thereof as hereinafter provided.

Sec. 8. *Census; Verification.*—On the day named in the  
2 foregoing order, the persons appointed therein shall  
3 proceed to take the census of the residents of said terri-  
4 tory. Such census shall exhibit the name of every head  
5 of a family residing in such territory on such day, and  
6 the number of persons then belonging to every such  
7 family; and it shall be verified by the affidavit of the per-  
8 sons taking the same, annexed thereto. Upon completion  
9 of said census the same shall be returned to the county  
10 court and become a part of the record in the cause.

Sec. 9. *Notice of Election for Incorporation.*—Notice of  
2 the day named by the court for voting on the question  
3 of incorporation shall be published once in each week  
4 for three successive weeks previous to said day, if there  
5 be a newspaper published within such territory; and, if  
6 there be no such paper, the notice shall be posted and  
7 kept posted in at least three of the most public places  
8 in such territory, for at least three weeks before the  
9 time so specified therein.

Sec. 10. *Election for Incorporation.*—On the day named  
2 in such notice for the taking of the vote hereinbefore  
3 mentioned, the qualified voters who have resided within  
4 the proposed bounds of such corporation for sixty days  
5 preceding such election shall meet at the place named  
6 in such notice and cast their votes for, or against, such  
7 incorporation. Each voter shall deposit a ballot in a bal-  
8 lot box to be provided for that purpose. Each ballot shall  
9 have written or printed thereon the words:

10 ☐ For Incorporation.

11 ☐ Against Incorporation

12 Such election shall be held under the superintendence  
13 of the commissioners of election appointed by the county  
14 court, and the result of such election shall be certified  
15 under oath and returned by them to the county court  
16 as soon as may be after such election. In the event of  
17 vacancy due to the failure or refusal to act of any election  
18 commissioner, such vacancy may be filled by the other  
19 commissioners.

Sec. 11. *Certificate of Incorporation.*—Upon the filing  
2 of the certificate of election aforesaid, and upon satisfac-  
3 tory proof that all the provisions of the foregoing sections  
4 of this article have been complied with, if it appear that  
5 a majority of the legal votes cast on the question were in  
6 favor of such incorporation, the county court shall, by an  
7 order entered of record, direct the clerk of the said court  
8 to issue a certificate of incorporation in form or in sub-  
9 stance, as follows: A certificate under oath of A - B -,  
10 C - D -, and E - F - was this day filed, showing that a  
11 majority of all the qualified voters residing in the follow-  
12 ing boundary, to-wit:

13 Beginning, etc. (here recite the boundaries), have voted  
14 in due form of law, in favor of the incorporation of the  
15 city (town or village) of \_\_\_\_\_, in the county  
16 of \_\_\_\_\_, bounded as herein set forth. And as  
17 it appears to the satisfaction of the court that all the  
18 provisions of chapter eight of the code of West Virginia  
19 have been complied with by the applicants of said in-  
20 corporation, said city (town or village) is a body cor-  
21 porate, duly authorized within the corporate limits afore-  
22 said, or as otherwise provided, to exercise all the corpor-

23 ate powers conferred by the said chapter from and after  
24 the date of this certificate.

25 C..... H....., Clerk

Sec. 12. *Costs of Incorporation.*—All reasonable costs  
2 incurred in procuring incorporation under this chapter  
3 shall be paid by the corporation. In case of failure to  
4 obtain incorporation, all such costs shall be paid by the  
5 petitioners: *Provided*, That the petitioners shall furnish  
6 bond of sufficient surety to cover all costs involved in  
7 holding such election and ascertaining results thereof.

Sec. 13. *Change of Corporate Boundary.*—Any five or  
2 more freeholders residing in any municipal corporation,  
3 desiring to change the corporate limits thereof may file  
4 their petition in writing with the council thereof setting  
5 forth the change proposed in the metes and bounds of  
6 such corporation, and asking that a vote be taken upon  
7 the proposed change. The council shall thereupon order  
8 a vote of the qualified voters residing in such corporation  
9 to be taken upon the proposed change at a time and place  
10 therein to be named in the order, not less than twenty  
11 nor more than thirty days from the date thereof, and if  
12 it be proposed to include any additional territory within  
13 such corporate limits, the council shall at the same time  
14 order a vote of all the qualified voters residing on such  
15 additional territory, and of all such voters owning any  
16 part of such territory, whether they reside therein or  
17 not, to be taken upon the question on the same day, at  
18 some convenient place on or near such additional terri-  
19 tory. The election shall be held, superintended and con-  
20 ducted, and the result thereof ascertained, certified and  
21 returned, in the same manner and by the same persons  
22 as elections for town officers. The ballots cast on such  
23 question shall have written or printed on them the  
24 words:

25 ☐ For change of corporate limits

26 ☐ Against change of corporate limits

27 If a majority of all the votes so cast within such cor-  
28 poration be in favor of the proposed change, and no addi-  
29 tional territory is proposed to be included therein, the  
30 corporate limits of such town shall thereafter be as pro-



31 posed by such petition. But, if additional territory is pro-  
32 posed to be included in such corporate limits, such change  
33 shall not take effect unless a majority of all the votes cast  
34 by the persons residing in such territory and owning any  
35 portion thereof be also in favor of such change.

Sec. 14. *Council to Certify Change of Boundary; Order.*

2 —The council of such town shall enter the result of such  
3 election upon its minutes, and, when the change pro-  
4 posed is adopted, as provided in the preceding section,  
5 shall certify the same to the county court of the county;  
6 and such court may thereupon, at its discretion, enter  
7 an order in substance as follows:

8 A certificate of the council of the city (town or village,  
9 as the case may be) of \_\_\_\_\_, was this day filed  
10 showing that a change has been made, in the manner re-  
11 quired by law, in the corporate limits thereof, and that  
12 by such change the said corporate limits are as follows:

13 Beginning at (here recite the boundaries, as changed).  
14 It is, therefore, ordered that such change in said corporate  
15 limits be, and the same is hereby approved and confirmed,  
16 and the clerk of the court is directed to deliver to the said  
17 council a certified copy of this order as soon as practicable  
18 after the rising of this court. And after the date of such  
19 order the corporate limits of such town shall be as set  
20 forth therein.

Sec. 15. *Forfeiture of Charters, Dissolution of Municipal*

2 *Corporation.*—Any town heretofore incorporated under  
3 the provisions of this chapter or which shall hereafter be  
4 incorporated under the provisions of this chapter, and  
5 which has no bonded indebtedness, and which shall fail  
6 for one year to exercise its corporate powers and privi-  
7 leges, or which has not twenty legal voters residing there-  
8 in, or in which there were not twenty legal votes cast  
9 at its last election, or the population of which shall be  
10 reduced below seventy-five persons and so remain for six  
11 months, shall in either event thereby forfeit its charter  
12 so granted, and all rights, powers and privileges so con-  
13 ferred upon such town. And the circuit court of the  
14 county where any such town is located within this state

15 shall have jurisdiction to hear and determine all matters  
16 relating to the forfeiture and dissolution of all such char-  
17 ters granted as hereinbefore provided, upon the petition  
18 of one or more of its inhabitants, or any ten freeholders  
19 of the county wherein such town is located, to annul and  
20 declare forfeited such charter, and shall dissolve the cor-  
21 poration. Ten days' notice of the filing of such petition  
22 with the clerk of the circuit court of the county wherein  
23 such town is located, served upon the mayor and recorder  
24 thereof, shall be sufficient notice upon which the judge  
25 of such court shall so act, and upon proper proof of the  
26 allegations of such petition, all such charters so granted  
27 shall be declared forfeited and the corporation dissolved.  
28 But if the territory so incorporated, or a major part there-  
29 of, either in area or in population, shall, within one year  
30 next after such declaration of forfeiture and dissolution  
31 by the circuit court, be reincorporated as a city, town or  
32 village, then the auditor of the state of West Virginia  
33 shall convey unto such new corporation all of the rights  
34 of the state of West Virginia in and to the corporate  
35 property moneys, claims, demands and taxes collected or  
36 uncollected, of the former corporation so dissolved.

Sec. 16. *Voluntary Discontinuance of Charters.*—Upon  
2 the petition of twenty-five per cent of the voters of any  
3 incorporated town containing not more than fifteen hun-  
4 dred inhabitants, the council thereof shall submit to the  
5 voters of such town at the next municipal election, or at a  
6 special election called for that purpose, the question of  
7 continuing or discontinuing the charter rights of such  
8 town. The ballots used in voting shall have written or  
9 printed upon them the words:

10 ☐ For continuance of charter.

11 ☐ For discontinuance of charter.

12 If a majority of the votes cast be "For discontinuance  
13 of charter," then the charter rights and privileges of such  
14 town shall cease with the terms of office of the council then  
15 in existence: *Provided*, That all debts or other obligations  
16 outstanding against such corporation shall be settled in  
17 full.

Sec. 17. *Appeals.*—An appeal may be taken to the cir-

2 cuit court from the final order of the county court as  
3 provided by article three, chapter fifty-eight of the code  
4 of West Virginia.

Sec. 18. *Charters Heretofore Granted Valid.*—This en-  
2 actment shall not affect the validity of any charter of  
3 incorporation heretofore granted to any city, town or  
4 village, under special act or general law.

### Article 3. Election, Appointment and Qualification of Officers.

#### Section

1. First election of officers; commissioners of election.
2. When first election held; notice.

Section 1. *First Election of Officers; Commissioners of*  
2 *Election.*—At the time of ordering the certificate men-  
3 tioned in section eleven, article two of this chapter, the  
4 court shall appoint three legal voters residing within such  
5 territory, who shall act as commissioners of election at  
6 the first election to be held in such town, as hereinafter  
7 provided, and, in case they shall fail or refuse to act,  
8 such election may be held, conducted, certified and re-  
9 turned by any three voters of such town appointed for  
10 that purpose by the voters present.

Sec. 2. *When First Election Held; Notice.*—The first  
2 election for officers of such corporation shall be held  
3 within sixty days from the date of the certificate men-  
4 tioned in section eleven, article two of this chapter, and  
5 the commissioners of election appointed at the time of  
6 such order shall cause notice to be given of the time and  
7 place of holding such election, which notice shall specify  
8 the officers to be voted for, and shall be printed in a  
9 newspaper once a week for three weeks next preceding  
10 the day appointed for such election, if one be published in  
11 such town, and, if none be published therein, copies there-  
12 of shall be posted in at least three of the most public  
13 places in such town for three weeks next preceding such  
14 election.

## CHAPTER 84

(Senate Bill No. 120—By Mr. Sinsel)

AN ACT to amend article four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section to be designated section ten-f, granting municipalities power to expend public funds for the purchase of public liability, bodily injury liability and property damage liability insurance policies for the protection of such municipalities against the negligent operation of motor vehicles owned by them, and against negligence in the operation of any proprietary or commercial function of such municipalities.

[Passed March 3, 1949; in effect July 1, 1949. Approved by the Governor.]

### **Article 4. Powers, Duties and Allied Relations of Municipal Corporations, Councils or Officers.**

#### **Section**

10-f. Public liability, bodily injury liability and property damage liability insurance by municipalities.

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

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

Section 10-f. *Public Liability, Bodily Injury Liability and Property Damage Liability Insurance by Municipalities.*—The governing body of every municipal corporation within this state is hereby expressly authorized to expend public funds for the purchase of public liability, bodily injury liability and property damage liability insurance policies for the protection of such municipalities, its officers, agents and employees against the negligent operation of all motor vehicles owned by such municipality, and against negligence in the operation of any proprietary or commercial function of such municipality.

## CHAPTER 85

(House Bill No. 397—By Mr. File, by request)

AN ACT to amend and reenact section seventeen, chapter sixty-eight, acts of the Legislature, regular session, one thousand nine hundred thirty-five, relating to establishment, maintenance, adjustment, readjustment, collection and enforcement of rates or charges for municipal public works, and providing for the collection and enforcement of rates or charges heretofore or hereafter established and maintained for the improvement or protection of property, provided or afforded by a municipal flood control system from the time provided in the municipal ordinance or resolution establishing such rates or charges, if, at such time, such works, though not yet fully constructed, are nearing completion and the municipal authorities are reasonably assured that such works will be completed and placed in operation without unreasonable delay.

[Passed March 12, 1949; in effect from passage. Approved by the Governor.]

### **Municipal Public Works.**

#### **Section**

17. Charges for services rendered by works.

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

That section seventeen, chapter sixty-eight, acts of the Legislature, regular session, one thousand nine hundred thirty-five, be amended and reenacted to read as follows:

#### **Section 17. Charges for Services Rendered by Works.—**

2 Municipal authorities shall have the power and it shall  
3 be their duty, by ordinance or resolution, to establish and  
4 maintain just and equitable rates or charges for the use  
5 and services rendered, or the improvement or protection  
6 of property, provided or afforded by such works, to be  
7 paid by the person using the same, receiving the services  
8 thereof, or owning the property improved or protected  
9 thereby, and may readjust such rates or charges from  
10 time to time. Rates or charges heretofore or hereafter  
11 established and maintained for the improvement or pro-

12 tection of property, provided or afforded by a municipal  
13 flood control system, to be paid by the person owning  
14 the property improved or protected thereby, shall be  
15 collectible and enforceable from the time provided in such  
16 ordinance or resolution, any provision of this or any other  
17 law to the contrary notwithstanding, if, at such time,  
18 such works, though not yet fully constructed, are nearing  
19 completion and such municipal authorities are reason-  
20 ably assured that such works will be completed and placed  
21 in operation without unreasonable delay. Such rates or  
22 charges shall be sufficient in each year for the payment  
23 of the proper and reasonable expenses of operation, repair,  
24 replacements and maintenance of the works, and for the  
25 payment of the sums herein required to be paid into the  
26 sinking fund.

27 Revenues collected pursuant to this section shall be  
28 deemed the revenues of the works. No such rates or  
29 charges shall be established until after a public hearing  
30 at which all the users of the works and/or owners of the  
31 property served, or to be served thereby, and others inter-  
32 ested, shall have an opportunity to be heard concerning  
33 the proposed rates or charges. After introduction of pro-  
34 posal of the ordinance or resolution fixing such rates or  
35 charges and before the same is finally enacted or passed,  
36 notice of such hearing, setting forth the proposed schedule  
37 of such rates or charges, shall be given by publishing  
38 same once each week for two successive weeks in two  
39 newspapers of opposite political faith published in such  
40 municipality, or in one newspaper, if only one political  
41 faith is represented by newspapers in the said munici-  
42 pality, or, if there be no newspapers so published, then  
43 such ordinances shall be posted in at least three public  
44 places therein, the first publication or posting of said no-  
45 tice to be at least ten days before the date fixed in such  
46 notice for the hearing, which hearing may be adjourned  
47 from time to time. No other or further notice to parties  
48 at interest shall be required. After such hearing the ord-  
49 inance or resolution establishing rates or charges, either  
50 as originally proposed or introduced, or as modified and  
51 amended, shall be passed or adopted and put into effect.  
52 A copy of the schedule of such rates and charges so estab-

53 lished shall be kept on file in the office of the board hav-  
54 ing charge of the operation of such works, and also in the  
55 office of the municipal authorities, and shall be open to  
56 inspection by all parties interested. The rates or charges  
57 so established for any class of users or property served,  
58 shall be extended to cover any additional class of users  
59 or property thereafter served which fall within the same  
60 class, without the necessity of any hearing or notice. Any  
61 change or readjustment of rates may be made in the same  
62 manner as such rates or charges were originally estab-  
63 lished as hereinabove provided. The aggregate of the  
64 rates or charges shall always be sufficient for such ex-  
65 pense of operation, repairs and maintenance, and for such  
66 sinking fund payments. If any service rates, charge or  
67 fee so established shall not be paid within thirty days  
68 after the same is due, the amount thereof may be recov-  
69 ered by the board in a civil action in the name of the  
70 municipality, and in the case of charges due for services  
71 rendered, such charges, if not paid when due, may, if coun-  
72 cil so provide in the ordinance provided for under section  
73 six of this act, constitute a lien upon the premises served  
74 by such works, which lien may be foreclosed against such  
75 lot, parcel of land or building so served, in accordance  
76 with the laws relating to the foreclosure of liens on real  
77 property. Upon failure of any person receiving any such  
78 service to pay for same when due, the board may discon-  
79 tinue such service without notice.

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## CHAPTER 86

(Senate Bill No. 272—By Mr. Eddy)

AN ACT to amend and reenact section twenty-five, article four-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal public works, additional powers, and extra-territorial jurisdiction.

[Passed March 11, 1949; in effect ninety days from passage. Approved by the Governor.]

#### **Article 4-a. Municipal Public Works; Bonds.**

##### **Section**

25. Article confers additional powers; extraterritorial jurisdiction.

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

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

Section 25. *Article Confers Additional Powers; Extraterritorial Jurisdiction.*—The authority herein given shall be in addition to and not in derogation of any power existing in any municipality under any constitutional, statutory or charter provisions which it may now have, or may hereafter acquire or adopt. For all purposes of this article, municipalities shall have jurisdiction for ten miles outside of the corporate limits thereof, except where such zone would overlap with another municipality, in which event the meridian line of the overlapping zone shall be the dividing line of their respective jurisdictions, except that one municipality shall have jurisdiction within such ten-mile zone and may overlap into the jurisdiction of another municipality or municipalities with the consent thereof.

## **CHAPTER 87**

(Com. Sub. for House Bill No. 246—Originating in the House Committee on Counties, Districts and Municipalities)

AN ACT to amend and reenact section seven, article five-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to examinations and eligible lists for police departments.

[Passed March 9, 1949; in effect from passage. Approved by the Governor.]

#### **Article 5-a. Civil Service for Police Departments.**

##### **Section**

7. Examinations; eligible lists.



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

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

Section 7. *Examinations; Eligible Lists.*—All examinations for positions or promotions shall be practical in their character, and shall relate to such matters, and include such inquiries, as will fairly and fully test the comparative merit and fitness of the person or persons examined to discharge the duties of the employment sought by him or them. All examinations shall be open to all applicants who have fulfilled the preliminary requirements, stated in other sections of this article. All applicants for any position in police department shall, as hereinafter stated, subject to regulations adopted by the civil service commission, be required to submit to a physical examination before being admitted to the regular examinations held by the commission. Said applicant shall have been a resident for three years next preceding date of his application, of the city or municipality in which he seeks to obtain employment in the police department: *Provided*, That if the commission deems it necessary it may consider applicants who are not residents of the city or municipality but who have been residents of the county in which the city or municipality is situated for the same period of time. Adequate public notice of the time and place of every examination held under the provisions of this article, together with information as to the kind of position or place to be filled, shall be given at least one week prior to such examination. The said commission shall adopt reasonable regulations for permitting the presence of representatives of the press at the examinations. The commission shall post, in a public place at its office, the eligible list, containing the names and grades of those who have passed examinations for positions in police departments, under this article, and shall indicate thereon such appointments as may be made from said list.

## CHAPTER 88

(Com. Sub. for House Bill No. 176—Originating in the House Committee on Counties, Districts and Municipalities)

AN ACT to repeal chapter sixty, acts of the Legislature, regular session, one thousand nine hundred thirty-three; chapter seventy-nine, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three; chapter sixty-seven, acts of the Legislature, one thousand nine hundred thirty-five; chapter one hundred seventy-three, acts of the Legislature, one thousand nine hundred thirty-nine; chapter one hundred nineteen, acts of the Legislature, one thousand nine hundred forty-seven; and to amend chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article designated article six-a, relating to the appointment and promotion of members of paid fire departments in cities and municipalities; and to provide for the creation and maintenance of a civil service commission for that purpose; to establish rules and procedure therefor; to regulate the manner in which demotions and discharge of employees of paid fire departments shall be made, and the rights and limitations of said employees in that respect; to provide for other matters relating to the duties and powers of said civil service commission, defining its powers, limiting its authority, etc.; and to provide penalties for the violations of the provisions of this act.

[Passed March 10, 1949; in effect from passage. Approved by the Governor]

### Article 6-a. Paid Fire Departments.

#### Section

1. Paid fire departments.
2. Civil service commission created.
3. Clerk of commission; clerical and stenographic services.
4. Rooms, stationery, etc., to be furnished by municipality.
5. Powers and duties of commission.
6. Rules and regulations for examinations, probationary appointments.
7. Character and notice of examinations; qualifications of applicants; press representatives; posting eligible lists.
8. Form of application for examination; refusal to examine.
9. Appointments from list of eligibles; appointing officer; special examinations for electricians or mechanics.

10. Noncompetitive examination for filling vacancy and provisional appointment.
11. Vacancies filled, as far as practicable, by promotions; eligibility for promotion.
12. Physical examination and age of applicant; exceptions.
13. Removal, discharge or reduction in rank or pay.
14. Political or religious opinions or affiliations of applicants.
15. Misdemeanors.
16. Penalties.
17. Political activity of members of fire departments under civil service.
18. Repeal of conflicting laws; intent of article.
19. Severability.

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

That chapter sixty, acts of the Legislature, regular session, one thousand nine hundred thirty-three; chapter seventy-nine, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three; chapter sixty-seven, acts of the Legislature, one thousand nine hundred thirty-five; chapter one hundred seventy-three, acts of the Legislature, one thousand nine hundred thirty-nine; chapter one hundred nineteen, acts of the Legislature, one thousand nine hundred forty-seven, are all hereby repealed, and that chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be further amended by adding thereto a new article designated article six-a, to read as follows:

Section 1. *Paid Fire Departments.*—Appointments to  
2 and promotions in all paid fire departments of cities of  
3 any population whatsoever, regardless of whether here-  
4 tofor operating under special charter or under the provi-  
5 sions of chapter eight, relating to municipal corporations,  
6 or chapter eight-a, relating to municipal home rule, of the  
7 code of West Virginia, one thousand nine hundred thirty-  
8 one, as amended, shall be made only according to qualifi-  
9 cations and fitness to be ascertained by examinations,  
10 which, so far as practicable, shall be competitive, as here-  
11 inafter provided. On and after the aforesaid date, no  
12 person shall be appointed, reinstated, promoted or dis-  
13 charged as a paid member of said fire department, re-  
14 gardless of rank or position, in any fire department, of  
15 any city in the state of West Virginia, in any manner  
16 or by any means others than those prescribed in this  
17 article.

Sec. 2. *Civil Service Commission Created.*—There shall be a “civil service commission” in each city or incorporated town having a fire department, any of the members of which are paid by said city or municipality. This civil service commission shall consist of three commissioners, one of whom shall be appointed by the mayor or principal executive officer of said city; one of whom shall be appointed by the local trades board in event that said board shall exist in said city, or in case no such board exists in said city, then by the paid international association of fire fighters; and the third shall be appointed by the local chamber of commerce. The persons appointed commissioners shall be qualified voters of the city or municipality for which they are appointed; and at least two of said commissioners shall be persons in full sympathy with the purposes of this article. Not more than two of the said commissioners, at any one time, shall be adherents of the same political party. The commissioners in each city shall be appointed as follows: Within thirty days after this article takes effect, the person, organization or board having appointive power to this civil service commission shall appoint three commissioners, the first of which to be appointed by the mayor or principal executive officer shall serve for six years from the date of his appointment; the second commissioner to be appointed by the local trades board, or in the absence of such board, by the international association of fire fighters, shall serve for four years from the date of his appointment; and the third commissioner to be appointed by the chamber of commerce of each city or municipality for a term of two years from the date of his appointment; in the absence of the existence of a board of commerce, at time any appointment is to be made—this third appointment shall be made by the other two members by mutual agreement; thereafter all appointments shall be made for periods of four years each by the appointing power hereinbefore designated. In event that any commissioner of said civil service commission shall cease to be a member thereof by virtue of death, removal, or other cause, a new commissioner shall be appointed to fill out

41 the unexpired term of said commissioner within ten days  
42 after said excommisioner shall have ceased to be a mem-  
43 ber of said commission. Such appointment shall be made  
44 by the officer or body who in the first instance appoint-  
45 ed the commisioner who is no longer a member of the  
46 commission. The three members of the commission shall,  
47 together, elect one of their number to act as president  
48 of the commission, who shall serve as president for one  
49 year. Each year thereafter the commissioners shall elect  
50 one of their number president, the member so elected to  
51 serve one year. The mayor or principal executive officer,  
52 may, at any time, remove a commissioner for good cause,  
53 which shall be stated in writing and made a part of the  
54 records of the commission: *Provided, however,* That once  
55 the mayor has to remove any commissioner, such removal  
56 shall be temporary only and shall be in effect for a period  
57 of ten days, if at the end of said period of ten days the  
58 circuit court of the county in which said city or municipi-  
59 pality is located, is in term or session. Within said ten  
60 day period the mayor shall file in the office of the clerk  
61 of the circuit court of said county a petition setting forth  
62 in full the reason for said removal and praying for the  
63 confirmation by said circuit court of the action of the  
64 mayor in so removing the said commissioner. A copy of  
65 said petition, in writing, shall be served upon the com-  
66 missioner so removed simultaneously with its filing in  
67 the office of the clerk of the circuit court and shall have  
68 precedence on the docket of said court and shall be heard  
69 by said court as soon as the removed commissioner shall  
70 demand. All rights hereby vested in said circuit court  
71 may be exercised by the judge thereof during vacation.  
72 In event that no term of circuit court is being held at  
73 the time of the filing of said petition, and the judge there-  
74 of can not be reached in the county wherein the petition  
75 was filed, said petition shall be heard at the next suc-  
76 ceeding term of said circuit court, whether regular or  
77 special, and the commissioner so suspended shall remain  
78 suspended until a hearing is had upon the petition of the  
79 mayor. The court, or the judge thereof, in vacation, shall  
80 hear and decide upon said petition. The contestant against

81 whom the decision of the court, or judge thereof, in va-  
82 cation, shall be rendered, shall have the right to petition  
83 the supreme court of appeals for a review of the decision  
84 of the circuit court, or the judge thereof, in vacation, as  
85 in chancery cases. In event that the mayor shall fail to  
86 file his petition in the office of the clerk of the circuit  
87 court, as hereinbefore provided, within ten days after  
88 the removal of said commissioner, such commissioner  
89 shall immediately resume his position as a member of  
90 the civil service commission.

91 Any citizen or citizens shall have the right, at any time,  
92 to file charges against any member of the civil service  
93 commission; such charges shall be filed in the form of a  
94 petition in the office of the clerk of the circuit court, a  
95 copy of said petition, in writing, to be served upon the  
96 commissioner sought to be removed. Said petition shall  
97 be matured for hearing and heard by the circuit court  
98 of the county wherein the said city or municipality for  
99 which such commissioner serves, as a member of the  
100 civil service commission, in the same manner as chan-  
101 cery proceedings in the circuit courts of West Virginia  
102 are heard, saving the right to petition the supreme court  
103 of appeals for a review of the action of the circuit court  
104 to the contestant against whom the circuit court's deci-  
105 sion is rendered.

106 No commissioner shall hold any other office under the  
107 United States the state of West Virginia, or any city,  
108 county or other political subdivision thereof; nor shall  
109 any commissioner serve on any political committee or  
110 take any active part in the management of any political  
111 campaign.

Sec. 3. *Clerk of Commission; Clerical and Stenographic*  
2 *Services.*—The city clerk or city recorder of any mu-  
3 nicipality under the terms of this article shall ex officio  
4 be clerk of the civil service commission and shall supply  
5 to the commission without extra compensation all neces-  
6 sary clerical and stenographic services for the work of  
7 the civil service commission.

Sec. 4. *Rooms, Stationery, etc., to Be Furnished by*  
2 *Municipality.*—It shall be the duty of the mayor, or prin-

3 cipal executive officer, and heads of departments of every  
4 city to cause suitable and convenient rooms and accommo-  
5 dations to be assigned and provided, and to be furnished,  
6 heated and lighted for carrying on the work and exam-  
7 inations of the civil service commission. The civil ser-  
8 vice commission may order from the proper authorities  
9 the necessary stationery, postage stamps, official seal  
10 and other articles to be supplied, and the necessary print-  
11 ing to be done for its official use. It shall be the duty of  
12 the officers of every city to aid the civil service commis-  
13 sion in all proper ways in carrying out the provisions  
14 of this article, and to allow the reasonable use of public  
15 buildings, and to heat and light the same, for holding  
16 examinations and investigations, and in all proper ways  
17 to facilitate the same.

Sec. 5. *Powers and Duties of Commission.*—The civil  
2 service commission in each city or municipality, within  
3 the terms of this article, shall:

4 First: Prescribe, amend and enforce rules and regu-  
5 lations for carrying into effect the provisions of this article.  
6 All rules so prepared may, from time to time, be added to,  
7 amended or rescinded: *Provided*, That all rules shall be  
8 approved by the mayor or principal executive officer and  
9 the council and if no council, the principal governing body,  
10 before they go into effect, but when so approved shall not  
11 be annulled or changed except by the commission with  
12 the approval of the mayor or principal executive officer  
13 and the council, or principal governing body: *Providing*  
14 *further, however*, That if said executive officer and said  
15 governing body takes no action on a rule or amendment  
16 submitted to them within a period of twenty days from  
17 the date of its submission, then the rule or amendment  
18 shall become effective as though approved by the princi-  
19 pal executive officer and principal governing body;

20 Second: Keep minutes of its own proceedings, and  
21 records of its examinations and other official actions. All  
22 recommendations of applicants for office, received by the  
23 said commission or by any officer having authority to  
24 make appointments to office, shall be kept and preserved  
25 for a period of ten years, and all such records, recommen-  
26 dations of former employees excepted, and all written

27 causes of removal, filed with it, shall, subject to reason-  
28 able regulation, be open to public inspection;

29 Third: Make investigations, either sitting as a body or  
30 through a single commissioner, concerning all matters  
31 touching the enforcement and effect of the provisions of  
32 this article, and the rules and regulations prescribed  
33 thereunder, concerning the action of any examiner or  
34 subordinate of the commission, or any person in the pub-  
35 lic service in respect to the execution of this article; and,  
36 in the course of such investigations, each commissioner  
37 shall have the power to administer oaths and affirmations,  
38 and to take testimony;

39 Fourth: Have power to subpoena and require the at-  
40 tendance of witnesses, and the production thereby of  
41 books and papers pertinent to the investigations and in-  
42 quiries hereby authorized, and to examine them and such  
43 public records as it shall require, in relation to any mat-  
44 ter which it has the authority to investigate. The fees of  
45 such witnesses for attendance and travel shall be the  
46 same as for witnesses before the circuit courts, and shall  
47 be paid from the appropriation for the incidental ex-  
48 penses of the commission. All officers in the public ser-  
49 vice, and their deputies, clerks, subordinates and employ-  
50 ees shall attend and testify when required to do so by  
51 said commission. Any disobedience to, or neglect of any  
52 subpoena issued by the said commissioners, or any one  
53 of them, to any person, shall be held a contempt of court,  
54 and shall be punished by any circuit court, within the  
55 county in which is the city from the civil service com-  
56 mission of which the said subpoena had issued, as if such  
57 subpoena had been issued therefrom. Any judge of any  
58 of said courts shall, upon the application of any one  
59 of said commissioners, in such cases, cause the process  
60 of said court to issue to compel such person or persons,  
61 disobeying or neglecting any such subpoena, to appear  
62 and to give testimony before the said commissioners,  
63 or any one of them, and shall have power to punish any  
64 such contempt;

65 Fifth: Make an annual report to the mayor or prin-  
66 cipal executive officer, showing its own action, and rules  
67 and regulations, and all the exceptions thereto in force,



68 and the practical effects thereof, and any suggestions  
69 it may approve for the more effectual accomplishment  
70 of the purposes of this article. Such report shall be avail-  
71 able for public inspection five days after the same shall  
72 have been delivered to the mayor or principal executive  
73 officer of any city or municipality.

Sec. 6. *Rules and Regulations for Examinations; Probationary Appointments.*—The civil service commission,  
2 in each city, shall make rules and regulations providing  
3 for examinations for positions in the paid fire depart-  
4 ment in each municipality under this article, and for  
5 appointments to and promotions therein, and for such  
6 other matters as are necessary to carry out the purposes  
7 of this article. Due notice of the contents of such rules  
8 and regulations and of any modifications thereof shall  
9 be given, by mail, in due season, to appointing officers  
10 affected thereby; and said rules and regulations and  
11 modifications thereof shall also be printed for public dis-  
12 tribution. All original appointments to any positions in  
13 fire departments within the terms of this article shall be  
14 for a probationary period of six months: *Provided, how-*  
15 *ever,* That at any time during the probationary period  
16 the appointee may be dismissed for just cause, in the  
17 manner provided in section thirteen. If, at the close  
18 of this probationary term, the conduct or capacity of  
19 the probationer has not been satisfactory to the appoint-  
20 ing officer, the probationer shall be notified, in writing,  
21 that he will not receive absolute appointment, where-  
22 upon his employment shall cease; otherwise, his reten-  
23 tion in the service shall be equivalent to his final  
24 appointment.  
25

Sec. 7. *Character and Notice of Examinations; Qualifications of Applicants; Press Representatives; Posting Eligible Lists.*—All examinations for positions or promotions shall be practical in their character, and shall relate  
3 to such matters, and include such inquiries, as will fairly  
4 and fully test the comparative merit and fitness of the  
5 persons examined to discharge the duties of the employ-  
6 ment sought by them. All examinations shall be open to  
7 all applicants who have fulfilled the preliminary require-  
8  
9

10 ments, stated in other sections of this article. All appli-  
11 cants for any position in the fire department shall, as  
12 hereinafter stated, subject to regulations adopted by the  
13 civil service commission, be required to submit to a  
14 physical examination before being admitted to the regu-  
15 lar examinations held by the commission. Said applicant  
16 shall have been a resident for three years next preceding  
17 date of his application, of the city or municipality in which  
18 he seeks to obtain employment on the fire department:  
19 *Provided*, That if the commission deems it necessary it  
20 may consider applicants who are not residents of the city  
21 or municipality but who have been residents of the county  
22 in which the city or municipality is situated for a period  
23 of at least three years and who shall agree, if accepted  
24 for employment, to reside within the corporate limits of  
25 the municipality where employed: *Provided, further*, That  
26 employees who shall have been employed by the fire de-  
27 partment for a period exceeding twenty years shall have  
28 the right to reside outside the city limits in the county  
29 of said corporate limits. Adequate public notice of the  
30 time and place of every examination held under the pro-  
31 visions of this article together with information as to the  
32 kind of position or place to be filled, shall be given at least  
33 one week prior to such examinations. The said commis-  
34 sion shall adopt reasonable regulations for permitting the  
35 presence of representatives of the press at the examina-  
36 tions. The commission shall post, in a public place at its  
37 office, the eligible list, containing the names and grades  
38 of those who have passed examinations for positions in  
39 fire departments, under this article, and shall indicate  
40 thereon such appointments as may be made from said lists.

2 *Sec. 8. Form of Application for Examination; Refusal*  
3 *to Examine.*—The civil service commission, in each city,  
4 shall require persons applying for admission to any ex-  
5 amination provided for under this article or under the  
6 rules and regulations of the said commission, to file in its  
7 office, within a reasonable time prior to the proposed  
8 examination, a formal application in which the applicant  
9 shall state under oath or affirmation:

9 First: His full name, residence, and post office address;

10 Second: His citizenship, age, and the place and date of  
11 his birth;

12 Third: His health, and his physical capacity for public  
13 service;

14 Fourth: His business and employments and residences  
15 for at least three previous years;

16 Fifth: Such other information as may reasonably be  
17 required, touching the applicant's qualifications and fit-  
18 ness for the public service.

19 Blank forms for such applications shall be furnished by  
20 the said commission, without charge, to all persons re-  
21 questing the same. The said commission may require, in  
22 connection with such application, such certificate of citi-  
23 zens, physician or others, having knowledge of the ap-  
24 plicant, as the good of the service may require. The said  
25 commission may refuse to examine an applicant; or, after  
26 examination, to certify as eligible, one who is found to  
27 lack any of the established preliminary requirements for  
28 the examination or position or employment for which he  
29 applies; or who is physically so disabled as to be rendered  
30 unfit for the performance of the duties of the position  
31 to which he seeks appointment; or who is addicted to the  
32 habitual use of intoxicating liquors or drugs; or who has  
33 been guilty of any crime, or of infamous or notoriously  
34 disgraceful conduct; or who has been dismissed from the  
35 public service for delinquency or misconduct; or who has  
36 made a false statement of any material fact, or practiced  
37 or attempted to practice any deception or fraud in his  
38 application, in his examination, or in securing his eligi-  
39 bility; or who refuse to comply with the rules and regu-  
40 lations of the commission.

41 If any applicant feels himself aggrieved by the action  
42 of the commission in refusing to examine him, or after  
43 an examination, to certify him as an eligible, as provided  
44 in this section, the commission shall, at the request of  
45 such applicant, appoint a time and place for a public hear-  
46 ing; at which time such applicant may appear, by himself  
47 or counsel, or both, and the commission shall then review  
48 its refusal to make such examination or certification, and  
49 testimony shall be taken. The commission shall subpoena,  
50 at the expense of the applicant, any competent witnesses

51 requested by him. After such review, the commission  
52 shall file the testimony taken, in its records, and shall  
53 again make a decision, which decision shall be final.

Sec. 9. *Appointments from List of Eligibles; Appointing  
2 Officer; Special Examinations for Electricians or Mechan-  
3 ics.*—Every position or employment, unless filled by pro-  
4 motion, reinstatement, or reduction, shall be filled only  
5 in the following manner: The appointing officer shall  
6 notify the civil service commission of any vacancy in the  
7 service which he desires to fill, and shall request the cer-  
8 tification of eligibles. The commission shall forthwith  
9 certify, from the eligible list, the names of the three per-  
10 sons thereon who received the highest averages at pre-  
11 ceding examinations held under the provisions of this  
12 article within a period of three years next preceding the  
13 date of such appointment. The appointing officer shall,  
14 thereupon, with sole reference to the relative merit and  
15 fitness of the candidates, make an appointment from the  
16 three names so certified: *Provided, however,* That should  
17 he make objection, to the commission, to one or more of  
18 these persons for any of the reasons stated in section  
19 eight, and should such objections be sustained by the  
20 commission, as provided in section eight, the commission  
21 shall thereupon strike the name of such person from the  
22 eligible list, and certify the next highest name for each  
23 person so stricken off. As each subsequent vacancy occurs,  
24 in the same or another position, precisely the same pro-  
25 cedure shall be followed: *Provided, however,* That after  
26 any name has been three times rejected, for the same or  
27 another position, in favor of a name or names below it  
28 on the same list, the said name shall be stricken from the  
29 list. When there are a number of positions of the same  
30 kind to be filled at the same time, each appointment shall,  
31 nevertheless, be made separately and in accordance with  
32 the foregoing provisions. When an appointment is made  
33 under the provisions of this section it shall be, in the first  
34 instance, for the probationary period of six months, as  
35 provided in section six: *Provided, however,* That in event  
36 any position as an electrician or mechanic is to be filled  
37 upon any paid fire department, then the examinations to

38 be given to applicants for either the positions of elec-  
39 trician or mechanic shall be so drawn as to test only the  
40 qualifications of such applicants in regard to their ability  
41 as electricians or mechanics, such examinations to be spe-  
42 cial examinations.

43 The term "appointing officer" as used in this article shall  
44 be construed to mean the municipal officer in whom the  
45 power of appointment of members to a paid fire depart-  
46 ment is vested by the charter of a city or municipality in  
47 which an appointment shall be made.

2 Sec. 10. *Noncompetitive Examination for Filling Va-*  
3 *cancy and Provisional Appointment.*—Whenever there are  
4 urgent reasons for filling a vacancy in any position in the  
5 fire department and there is no list of persons eligible  
6 for appointment after a competitive examination, the ap-  
7 pointing officer may nominate a person to the civil service  
8 commission for noncompetitive examination; and if such  
9 nominee shall be certified by the said commission as  
10 qualified, after such noncompetitive examination, he may  
11 be appointed provisionally, to fill such vacancy until a  
12 selection and appointment can be made after competitive  
13 examination, in the manner prescribed in section nine; but  
14 such provisional appointment shall not continue for a  
15 longer period than three months, nor shall successive pro-  
16 visional appointments be made to the same position, under  
this provision.

2 Sec. 11. *Vacancies Filled, as Far as Practicable, by Pro-*  
3 *motions; Eligibility for Promotion.*—Vacancies in posi-  
4 tions in the fire department shall be filled, so far as prac-  
5 ticable, by promotions from among persons holding posi-  
6 tions in the next lower grade in the department. Promo-  
7 tions shall be based upon merit to be ascertained by tests  
8 to be provided by the civil service commission and upon  
9 the superior qualifications of the persons promoted, as  
10 shown by his previous service and experience: *Provided,*  
11 *however,* That no person shall be eligible for promotion  
12 from the lower grade to the next higher grade until such  
13 person shall have completed at least two years' service  
14 in the next lower grade in the department. The com-  
mission shall have the power to determine in each in-

15 stance whether an increase in salary constitutes a pro-  
16 motion: *Provided, however,* That in all cities in which  
17 the office of chief was not covered by the provisions of  
18 this article on the first day of January, one thousand nine  
19 hundred forty-nine, such office in such city shall be ex-  
20 cepted from the provisions of this article until such time  
21 as the governing body in said city shall, by appropriate  
22 resolution or ordinance adopted by a majority of its mem-  
23 bers, elect to place the office of chief under the provisions  
24 of this article: *And provided further,* That those chiefs  
25 now in office, or hereinafter appointed to such office, shall  
26 in all cases of removal, except for removals for malfeas-  
27 ance or misfeasance of office, revert to that status they  
28 held at the time of their appointment to the office of chief.

Sec. 12. *Physical Examination and Age of Applicant;*  
2 *Exceptions.*—All applicants for any position in the fire  
3 department shall undergo a physical examination which  
4 shall be conducted under the supervision of a commission  
5 composed of two doctors of medicine appointed for that  
6 mission by the mayor or principal executive officer of the  
7 city or municipality. Said commission shall certify that  
8 an applicant is free from any bodily or mental defects,  
9 deformity or diseases that might incapacitate him from  
10 the performance of the duties of the position desired be-  
11 fore said applicant shall be permitted to take further ex-  
12 aminations. No application will be received if the person  
13 applying is less than twenty-one years of age or more  
14 than thirty-five years of age at the date of his applica-  
15 tion: *Provided, however,* That in event any applicant has  
16 formerly served upon the fire department of the city to  
17 which he makes application, for a period of more than six  
18 months, and has resigned from the department at a time  
19 when there were no charges of misconduct or other mis-  
20 feasance pending against such applicant, within a period  
21 of two years next preceding the date of his application,  
22 and is a resident of the city or municipality, and is still  
23 a resident of the city or municipality of the fire depart-  
24 ment on which he seeks reinstatement, then such person  
25 shall be eligible for reinstatement in the discretion of the  
26 civil service commission, even though such applicant shall

27 be over the age of thirty-five years. Such applicant, pro-  
28 viding the former term of service so justifies, may be  
29 reappointed to the fire depratment without examination  
30 other than a physical examination; if such person shall  
31 be so reinstated to the fire department he shall be the  
32 lowest in rank in the department next above the proba-  
33 tioners of the department.

Sec. 13. *Removal, Discharge or Reduction in Rank or*  
2 *Pay.*—No member of any fire department within the terms  
3 of this article shall be removed, discharged or reduced  
4 in rank or pay except for just cause, which shall not be  
5 religious or political; further, no such employee shall be  
6 removed, discharged or reduced except as provided in  
7 this article, and in no event until he shall have been fur-  
8 nished with a written statement of the reasons for such  
9 action. In every case of such removal or reduction, a  
10 copy of the statement of reasons therefor and of the  
11 written answer thereto, if the person sought to be re-  
12 moved desires to file such written answer, shall be fur-  
13 nished to the civil service commision and entered upon  
14 its records. If the person sought to be removed or reduced  
15 shall demand it, the civil service commission shall grant  
16 him a public hearing, which hearing shall be held within  
17 a period of ten days from the filing of the charges in writ-  
18 ing and the written answer thereto. At such hearing the  
19 burden shall be upon the removing officer to justify his  
20 action. In event that the civil service commission fails  
21 to justify the action of the removing officer, then the per-  
22 son sought to be removed shall be reinstated with full  
23 pay for the entire period during which he may have  
24 been prevented from performing his usual employment,  
25 and no charges be officially recorded against his record.  
26 A written record of all testimony taken at such hearing  
27 shall be kept and preserved by the civil service commis-  
28 sion, which record shall be sealed and not be available  
29 for public inspection, in event that no appeal shall be  
30 taken from the action of the commission. In event that  
31 the civil service commission shall sustain the action of  
32 the removing officer the person removed shall have an  
33 immediate right of appeal to the circuit court of the

34 county wherein the city or municipality is situated. Said  
35 appeal shall be taken within ninety days from the entry  
36 by the civil service commission of its final order; upon  
37 such an appeal being taken and docketed with the clerk  
38 of the circuit court of said county, the circuit court shall  
39 proceed to hear the appeal upon the original record taken  
40 therein and no additional proof shall be permitted to be  
41 introduced. The circuit court's decision shall be final,  
42 saving to the employee, however, the right to petition  
43 the supreme court of appeals for a review of the circuit  
44 court's decision.

45 The removing officer and the person sought to be re-  
46 moved shall at all times, both before the civil service  
47 commission and upon appeal, be given the right to em-  
48 ploy counsel to represent either of them before said civil  
49 service commission and upon appeal; should the person  
50 removed elect to appeal to the circuit court as herein-  
51 before provided: *Provided, however,* That if for reasons  
52 of economy or other reasons it shall be deemed necessary  
53 by any city or municipality to reduce the number of  
54 paid members of any fire department then said munici-  
55 pality shall follow the following procedure:

56 First: If there be any paid firemen eligible for retire-  
57 ment under the terms of a pension fund act, if such fund  
58 exists in said city or municipality, then such reduction  
59 in numbers shall be made by retirement on pension of  
60 all such eligible paid members of the fire department;

61 Second: If the number of paid firemen eligible for re-  
62 tirement under the pension fund of said city or munici-  
63 pality, if such pension fund exists, is insufficient to effect  
64 the reduction in numbers of said paid fire department  
65 desired by said city or municipality, or if there is no eli-  
66 gible person for retirement under the pension fund of said  
67 city or municipality, or if no pension fund exists in said  
68 city or municipality, then reduction in members of the  
69 paid fire department of said city or municipality shall  
70 be effected by suspending the last man or men, includ-  
71 ing probationers, that have been appointed to said fire  
72 department. Such removal shall be accomplished by  
73 suspending in numerical order commencing with the last



74 man appointed to the fire department, all recent ap-  
75 pointees to said fire department until such reduction shall  
76 have been accomplished: *Provided, further,* That in event  
77 the said fire department shall again be increased in num-  
78 bers to the strength existing prior to such reduction of  
79 members the said firemen suspended under the terms of  
80 this article shall be reinstated before any new appoint-  
81 ments to said fire department shall be made.

Sec. 14. *Political or Religious Opinions or Affiliations*  
2 of Applicants.—No question in any form of application  
3 or in any examination shall be so framed as to elicit  
4 information concerning the political or religious opinions  
5 or affiliations of any applicant; nor shall inquiry be made  
6 concerning such opinions or affiliations; and all disclo-  
7 sures thereof shall be discountenanced. No discrimina-  
8 tion shall be exercised, threatened, or promised by any  
9 person in the fire department against, or in favor of, an  
10 applicant, eligible, or employee in fire departments un-  
11 der this article because of his political or religious opin-  
12 ions or affiliations.

Sec. 15. *Misdemeanors*.—Whoever makes an appoint-  
2 ment to office, or selects a person for employment, con-  
3 trary to the provisions of this article, or wilfully refuses  
4 or neglects otherwise to comply with, or to conform to,  
5 any of the provisions of this article, or violates any of  
6 such provisions, shall be deemed guilty of a misdemeanor.  
7 Any commissioner or examiner, or any other person,  
8 who shall wilfully, by himself or in cooperation with  
9 one or more persons, defeat, deceive or obstruct any per-  
10 son in respect to his right of examination or registration  
11 according to this article, or to any rules or regulations  
12 prescribed pursuant thereto, or who shall wilfully or cor-  
13 ruptly, falsely mark, grade, estimate, or report upon the  
14 examination or proper standing of any person examined,  
15 registered, or certified, pursuant to the provisions of this  
16 article, or aid in so doing, or who shall wilfully or cor-  
17 ruptly furnish to any person any special or secret  
18 information, for the purpose of either improving or in-  
19 juring the prospects or chances of appointment of any  
20 person so examined, registered, or certified, or to be

21 examined, registered, or certified; or who shall personate  
22 any other person, or permit or aid in any manner any  
23 other person to impersonate him in connection with any  
24 examination or registration, or application, or request  
25 to be examined or registered, shall, for each offense, be  
26 deemed guilty of a misdemeanor.

Sec. 16. *Penalties.*—Misdemeanors under the provisions  
2 of this article shall be punishable by a fine of not less  
3 than fifty dollars, nor more than one thousand dollars,  
4 or by imprisonment for a term not exceeding one year,  
5 or by both fine and imprisonment, in the discretion of  
6 the court.

Sec. 17. *Political Activity of Members of Fire Departments under Civil Service.*—No member of any fire department within the terms of this article shall engage in  
3 any political activity of any kind, character or nature  
4 whatsoever, except to cast his vote at any election, and  
5 shall not act as an officer of election in any election, municipal or general. Any member of any fire department  
6 engaging in any political activity herein prohibited shall  
7 be subject to dismissal, as provided by the provisions of  
8 this article.  
9  
10

Sec. 18. *Repeal of Conflicting Laws; Intent of Article.*—  
2 All acts and parts of acts of the Legislature of the state  
3 of West Virginia, general, special, local or municipal  
4 charters, or parts thereof, in relation to any civil service  
5 measure affecting the paid fire departments of any city  
6 or municipality inconsistent with this article shall be,  
7 and the same are hereby repealed insofar as such inconsistencies shall exist. It is understood and intended by  
8 this article to furnish a complete and exclusive system  
9 for the appointment, promotion, reduction, removal and  
10 reinstatement of all officers, firemen or other employees  
11 of said fire departments in all cities and municipalities  
12 wherein the members of the fire department are paid.  
13 And it is further intended that this act shall not in any  
14 way affect the status or tenure in office of those employees  
15 and personnel now employed by the paid fire departments  
16 or the present commissioners.  
17

18 Chapter sixty, acts of the Legislature, regular session,  
19 one thousand nine hundred thirty-three; chapter seventy-  
20 nine, acts of the Legislature, second extraordinary session,  
21 one thousand nine hundred thirty-three; chapter sixty-  
22 seven, acts of the Legislature, one thousand nine hundred  
23 thirty-five; chapter one hundred seventy-three, acts of  
24 the Legislature, one thousand nine hundred thirty-nine;  
25 and chapter one hundred nineteen, acts of the Legislature,  
26 one thousand nine hundred forty-seven, are all hereby  
27 repealed.

Sec. 19. *Severability*.—If any provision of this act or  
2 the application thereof to any person, city, office, or cir-  
3 cumstances, shall be held invalid, such invalidity shall not  
4 affect the provisions or applications of this act which can  
5 be given effect without the invalid provision or applica-  
6 tion and to this end the provisions of this act are declared  
7 to be severable.

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## CHAPTER 89

(Com. Sub. for House Bill No. 72—Originating in the House Committee on  
the Judiciary)

AN ACT to amend and reenact article eight, chapter eight of  
the code of West Virginia, one thousand nine hundred  
thirty-one, relating to authorizing and enabling any mu-  
nicipality in the state to permanently improve streets,  
avenues, alleys, easements, sidewalks or other public ways  
by grading, paving surfacing, curbing, or otherwise im-  
proving or reimproving the same, and to construct storm  
sewers and sanitary sewers and sewer systems therein,  
and to assess the cost of any or all of such improvements  
on abutting property.

[Passed March 7, 1949; in effect from passage. Approved by the Governor.]

### Article 8. Assessments to Improve Streets, Sidewalks, Sew- ers, etc.

#### Section

1. Powers of municipal corporations relating to street, sidewalk and sewer improvements.

2. Petition of abutting property owners; action of governing body without petition.
3. Notice to abutting owners to be given before authorizing improvement; form of notice.
4. Sewers and sewer assessments.
5. What total cost to include.
6. Apportionment and assessment of cost.
7. Ordinance or resolution authorizing improvement; approval of plans, specifications and estimates; provisions for payment and cost and assessment certificates; advertisement for bids.
8. Report on completion; notice to abutting owners; hearings; assessment.
9. Assessment certificates; issuance, sale and negotiation; recording assessing resolution or ordinance.
10. Liens; payment, suit for enforcement; enforcement; when service may be had by publication.
11. Assessment against property of public, charitable, eleemosynary, educational or religious institutions; duty of those in charge to cause assessments to be paid.
12. Place of payment; release.
13. Re-assessment for void, irregular or omitted assessments.
14. Liberal construction of this act.
15. Effect on special and home rule charter provisions.
16. Separability.

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

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

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, home rule charter or under general law, is hereby authorized and empowered, in addition to any other rights or powers conferred upon it, upon the terms, conditions and in the manner hereinafter set forth, to grade, regrade, pave or repave, surface or resurface, curb or recurb, streets and alleys, and to build or renew sidewalks, and to construct, provide or renew any of such improvements or other permanent public improvements in any streets, alleys, public ways of easements, or portions thereof, in such municipality, and, if deemed advisable, to construct storm and sanitary sewers, or all or a part of a sewer system in any streets, easements, public ways, or alleys, or portions thereof, independently or in conjunction with other of such improvements, and to assess the costs of any or all of such improvements on abutting property.

Sec. 2. *Petition of Abutting Property Owners; Action of Governing Body Without Petition.*—Upon the petition in writing of persons owning the greater amount of frontage of property abutting upon both sides of any portion of a street, public way, alley, or easement, for any permanent improvement or reimprovement authorized in section one hereof the council or other governing body of any such municipality, by a lawful majority thereof, may, after giving notice to abutting property owners as in this article is provided, by resolution or ordinance declare the necessity or convenience of such improvement and order and cause such portions of such streets, alleys, public ways or easements to be graded, regraded, paved, repaved, surfaced, resurfaced, curbed, recurbed, sewerred, resewerred, permanently improved or reimproved with sidewalks or otherwise permanently improved or reimproved with suitable material, or any one or more of such improvements without the others, as may be determined by the governing body, to be constructed therein or in such part or parts thereof as the governing body may determine, and such governing body may specially assess the entire cost of such improvements, or any part thereof, upon the property abutting on the portions of the streets, alleys, public ways or easements improved.

Such governing body of the municipality may also adopt such resolution or ordinance of necessity or convenience and provide for such improvements and the assessing of the cost thereof upon abutting property without such a petition of property owners having first been received, when the resolution or ordinance providing for such improvement is adopted by the affirmative vote of at least three-fourths of the members of such governing body by recorded vote, after having given notice to abutting property owners as hereinafter provided.

Sec. 3. *Notice to Abutting Owners to be Given Before Authorizing Improvement; Form of Notice.*—Before the adoption of such resolution or ordinance of necessity or convenience, the governing body shall cause notice to be

5 given to owners of abutting property that such resolution or ordinance will be considered before adoption at  
6 a public meeting of the governing body at a time and  
7 place named in the notice and all persons or corporations  
8 shall at that meeting, or an adjournment thereof, be  
9 given an opportunity to protest or be heard concerning  
10 the adoption or rejection of said resolution or ordinance.  
11 Such notice to owners of property abutting on the portion  
12 of the street, alley, public way or easement to be  
13 improved may be by personal service on owners at least  
14 ten days before said meeting. In lieu of personal service  
15 of such notice, the following described notice, or one  
16 in substantially the same form, may be given, and shall  
17 be deemed to have been served on all such owners of  
18 abutting property, by publication once a week for three  
19 successive weeks before said meeting in some newspaper  
20 of general circulation, but not necessarily published, in  
21 said municipality, as follows:

22 "NOTICE TO ALL PERSONS OR CORPORATIONS  
23 OWNING PROPERTY ABUTTING ON .....  
24 (here describe the portion of the street, alley, public way  
25 or easement to be improved) IN THE ..... (town  
26 or city) OF ..... (name of municipality):

27 Proposals have been made to the ..... (common  
28 council, board of directors, commissioners, or other governing  
29 body) of the ..... (town or city)  
30 of ..... (name of municipality) to  
31 permanently improve the portion of the street (alley,  
32 public way or easement) above described in .....  
33 (name of municipality) by ..... (grading,  
34 paving, constructing sanitary or storm sewers, constructing  
35 sidewalks, or other general description of the proposed  
36 improvements) as the ..... (council,  
37 board of directors, commissioners, or other governing  
38 body) may deem proper, and to assess the cost of such  
39 improvements on the property abutting said portion of  
40 said street (alley, public way or easement).

41 The proposals to make such improvements, and the  
42 plans, specifications, profiles and estimates will be considered  
43 by the ..... (governing body)  
44 at a public meeting to be held on the ..... day of .....

46 19....., at ..... M. at ..... Any abutting owner or  
47 interested party will be given an opportunity to protest  
48 or be heard at said meeting or an adjournment thereof.  
49 ..... (name of the clerk or recorder)  
50 ..... (official position)."

51 A certificate of publication of the notice, made by the  
52 newspaper publisher, and a copy of the notice shall be  
53 made a part of the minutes of the governing body and  
54 spread on its records of the meeting described in the  
55 notice. The service of said notice upon all persons, firms  
56 or corporations owning any interest in any property abut-  
57 ting upon any portion of said street, alley, public way  
58 or easement to be improved shall conclusively be deemed  
59 to have been given when such newspaper publication  
60 shall have been completed: *Provided*, That where any  
61 foreign railroad or other foreign corporation is the owner  
62 of property abutting upon any street, alley, public way  
63 or easement sought to be improved under the provisions  
64 hereof, notice shall be given to such railroad or other  
65 foreign corporation as prescribed by section one, article  
66 ten, chapter eight of the code of West Virginia, one thou-  
67 sand nine hundred thirty-one, before the adoption of any  
68 ordinance or resolution relating to, and providing for,  
69 such improvements.

Sec. 4. *Sewers and Sewer Assessments.*—The govern-  
2 ing body is authorized and empowered to order and  
3 cause to be constructed, in said municipality, or part  
4 within and part outside of the limits of said municipality,  
5 public, common, lateral, branch, trunk and combined  
6 sewers or public sewer systems, or both, by contract or  
7 direct by the municipality, for the benefit of said mu-  
8 nicipality or any part thereof, and to purchase lands or  
9 easements therein or to condemn lands or easements  
10 therein in the manner provided by law for such sewers  
11 or sewer systems. When the governing body shall order  
12 and complete the construction of any such sewer or sewer  
13 system or any part thereof in said municipality, the prop-  
14 erty abutting on such sewer or abutting upon an avenue,  
15 street, alley, right of way or easement in which such  
16 sewer shall be constructed, or abutting on any avenue,

17 street, alley, right of way or easement, in which any such  
18 sewer or part of a sewer system is constructed and laid,  
19 may be charged with all or any part of the cost thereof,  
20 including the cost of such sewer or sewer system at and  
21 across intersections at avenues, streets, roads and alleys  
22 adjacent thereto.

23 A sewer system shall be deemed to include all the com-  
24 mon sewers whether they be lateral, branch, trunk or  
25 combined sewers, which serve to drain a definite drain-  
26 age area as specified in the order of the council directing  
27 the work to be done.

28 In case of a corner lot, frontage which may be assessed  
29 is to be measured along the longest dimension thereof  
30 abutting on each street, alley, right of way or easement  
31 in which such sewer is laid, but if sewerer on both sides  
32 then such corner lot is to be charged only with the side  
33 first sewerer unless more than two hundred feet in  
34 depth. Any lot having a depth of two hundred feet or  
35 more and fronting on two streets, alleys, rights of way  
36 or easements, one in the front and one in the rear of said  
37 lot, shall be assessed on both of said streets, alleys, rights  
38 of way or easements, if a sewer is constructed on both  
39 such streets, alleys, rights of way or easements. Where  
40 a corner lot has been assessed on either or both ends, it  
41 shall not be assessed on the side, and where it has been  
42 assessed on the side, it shall not be assessed on the end.

43 In case of corner lots where the cost of sewerer along  
44 one dimension is not assessed against the owner thereof,  
45 and in the case of lots less than two hundred feet deep  
46 abutting at each end on a street, alley, right of way or  
47 easement in which a sewer is laid, the cost of sewerer  
48 along the dimension or end not assessed against the prop-  
49 erty owner shall in every case be apportioned and as-  
50 sessed against the other property abutting on the streets,  
51 alleys, easements and public ways being improved, in  
52 the manner of the apportionment of the cost of improve-  
53 ments in intersections.

Sec. 5. *What Total Cost to Include.*—In ascertaining  
2 the total cost of the improvements in any project under-  
3 taken pursuant to this article, there shall be included the  
4 cost and expense of surveys, engineering and attorneys'



5 fees, the printing and publishing in relation thereto, and  
6 the cost and expense of all labor, work, supervision,  
7 inspection, equipment leased, and materials furnished  
8 and used in completing said improvements.

Sec. 6. *Apportionment and Assessment of Cost.*—The  
2 cost of the entire project, including the cost of all  
3 improvements at and within intersections, shall be ap-  
4 portioned to, and assessed against, and borne by the prop-  
5 erties abutting upon the streets, public ways, alleys or  
6 easements upon which the improvements involved in the  
7 project shall have been made. Each lot or parcel of land  
8 so abutting shall be assessed with that portion of the total  
9 cost of the entire project which is represented by the  
10 proportion which the abutting frontage in feet of such  
11 lot or parcel bears to the total abutting frontages in feet  
12 of all the lots or parcels of land abutting on the streets,  
13 public ways, alleys or easements so improved: *Provided,*  
14 *however,* That if the character of the improvements shall  
15 be substantially different upon different streets, public  
16 ways, easements or alleys, or portions thereof, the cost  
17 may be equitably apportioned to the respective streets,  
18 public ways, alleys, easements, or portions thereof, in  
19 proportion to the character and cost of the improvements  
20 respectively thereon; and the part of the cost so appor-  
21 tioned to each respective street, public way, easement,  
22 or alley, or portion thereof, shall be apportioned to and  
23 assessed against the respective lots or parcels of land  
24 abutting thereupon in the proportion as hereinabove pro-  
25 vided: *Provided further,* That if any part of the street,  
26 alley, easement or public way improved is used by a  
27 railway then the cost of the portion of the improvements  
28 between the rails and for two feet outside said rails shall  
29 be assessed against and wholly borne by the owner of  
30 the railway: *Provided further,* That if there be any land  
31 or other property abutting on the portion of the street  
32 or alley so improved which it has been determined by  
33 the governing body of the municipality, and, shown in  
34 the ordinance or resolution authorizing the improve-  
35 ment, not to be specially benefited by the improvement,  
36 or for other reasons would not be liable to assessment

37 for any of the cost of improvement, then the cost of the  
38 improvements abutting such part of said street or alley  
39 as is so determined to be nonassessable shall be appor-  
40 tioned among, assessed and borne by the remaining prop-  
41 erty abutting upon the portion of the street, alley, pub-  
42 lic way or easement improved in proportion to the front-  
43 age of such remaining abutting property as hereinabove  
44 provided: *Provided further*, That if such improvement  
45 include the construction or reconstruction of sidewalks  
46 on only one side of a street, alley, public way or ease-  
47 ment, then the cost of such sidewalk shall be assessed  
48 only on the property abutting on that side where the  
49 sidewalks are so constructed: *Provided, further*, That  
50 in apportioning and assessing the cost of sewers or sewer  
51 systems the provisions of section four hereof shall be  
52 observed: *Provided further*, That if there be land or other  
53 property abutting the street, alley, easement or public  
54 way so improved which is owned by the United States of  
55 America, and, for that reason, not legally subject to  
56 assessment, then the municipality shall pay the propor-  
57 tionate part of the cost of the improvement which other-  
58 wise would be assessable against such federally owned  
59 land or property.

Sec. 7. *Ordinance or Resolution Authorizing Improve-*  
2 *ment; Approval of Plans, Specifications and Estimates;*  
3 *Provisions for Payment and Cost and Assessment Cer-*  
4 *tificates; Advertisement for Bids.*—After hearing held  
5 pursuant to notice as provided in section three hereof the  
6 governing body of the municipality, by resolution or  
7 ordinance, may authorize such improvement and the  
8 assessing of the total cost or any part thereof on abutting  
9 property as herein provided. In the same or subsequent  
10 resolutions or ordinances, but before advertising for bids  
11 from contractors, the governing body of the municipality  
12 shall cause to be prepared plans, specifications and esti-  
13 mates of the cost of the proposed improvements under  
14 the supervision of the engineer for the municipality. Such  
15 plans, specifications and estimates shall show the pro-  
16 posed grade and sufficient data for any owner of abutting  
17 property to calculate approximately what proportionate

18 part of the estimated cost thereof might be assessed  
19 against his property, and shall be filed with the clerk or  
20 recorder and open to the inspection of interested persons  
21 before advertisement for bids of contractors and before  
22 the meeting at which such bids may be accepted or re-  
23 jected. Before advertising for bids of contractors such  
24 governing body of the municipality shall consider said  
25 plans, specifications and estimates and may amend or  
26 modify them, and before advertising for bids shall by  
27 resolution or ordinance approve such plans, specifications  
28 and estimates as so amended and modified. Such resolu-  
29 tion or ordinance before advertisement for bids shall also  
30 provide for advertisement for bids, for letting of contract  
31 or contracts for the work to the lowest responsible bidder,  
32 with right reserved to such governing body to reject any  
33 and all bids and shall provide for supervision of such  
34 work by the mayor, city manager, city engineer or other  
35 person or committee designated by the governing body.  
36 Such resolution or ordinance shall also provide for pay-  
37 ment of the cost of the work when completed. The gov-  
38 erning body shall provide in such resolution or ordinance  
39 for the payment by abutting property owners of the cost  
40 thereof in equal installments payable over a period of not  
41 less than five years nor more than ten years from the  
42 date of assessment, with interest at the rate of six per cent  
43 per annum from the date of assessment, and in said reso-  
44 lution or ordinance the governing body shall fix the num-  
45 ber of installments in which the amounts assessed shall  
46 be payable: *Provided*, That each of said assessments or  
47 the installments thereof then remaining unpaid shall be  
48 payable at any time after assessment without interest  
49 after the date of payment: *Provided further*, That on  
50 failure of the owner of the property assessed to pay any  
51 installment as and when due, and such default continuing  
52 for sixty days, then at the option of the holder of the  
53 certificates evidencing such assessment, the entire bal-  
54 ance due may be declared immediately due and payable  
55 and the holder of the certificates may forthwith proceed  
56 to enforce the collection thereof: *And provided further*,  
57 That if the amounts to be assessed against abutting prop-

erty be less than two dollars for each abutting front foot of property, then said governing body is authorized to make the same payable in one lump sum or in installments, with interest, over a period of less than five years from the date of assessment.

Sec. 8. *Report on Completion; Notice to Abutting Owners; Hearings; Assessment.*—When the improvement of such street, alley, easement, or public way has been completed, the governing body shall cause the engineer, or other person charged by the governing body with the supervision of the work of improvement, to make a report showing the several frontages abutting thereon, and the total cost, and showing the respective amounts chargeable upon each lot or parcel of land assessed abutting thereon, and showing the proper amounts to be assessed against the respective abutting lots or parcels of land as provided herein, with a description of the abutting lots and lands as to ownership, frontage and location. The governing body of the municipality shall thereupon give notice to the owners of the property to be assessed that on or after a date named in said notice an assessment may be laid against the property so improved as embodied in said report. Said notice shall state that the owner or owners whose property is to be assessed, or other interested party, may on said date appear before the governing body to move the revision or correction of such proposed assessment. Such notice shall be by publication once a week for two successive weeks in a newspaper of general circulation in the county in which such municipality is located, and said notice shall show the total cost of the improvement, the several frontages abutting thereon and the respective amounts to be assessed against the abutting property, with a description of the respective abutting lots and lands as to ownership, frontage and location. On or after the date so advertised, the governing body may revise, amend, correct and verify the report and proceed by resolution or ordinance to lay the assessments as corrected and verified.

Sec. 9. *Assessment Certificates; Issuance, Sale and*

2 *Negotiation; Recording Assessing Resolution or Ordinance.*—Immediately on laying of the assessment against  
3 the abutting property, certificates shall be issued evidenc-  
4 ing said assessments and each installment of principal  
5 and interest payable. Said certificates shall be payable to  
6 the bearer and be signed by the mayor and clerk or other  
7 equivalent officers of the municipality, and shall refer  
8 to the ordinance or resolution laying the assessments;  
9 shall show the amount and date of the assessment and  
10 describe the property against which the assessment is  
11 laid, describe the same as to ownership, amount, frontage  
12 and briefly as to location. Said certificates shall also show  
13 the dates on which principal and interest payments are  
14 due, and shall contain a provision that in event of default  
15 in the payment of any one of such installments, and such  
16 default continuing for a period of sixty days, than all  
17 unpaid installments shall become due and payable at  
18 the election of the certificate holder and the holder may  
19 proceed to collect all of the unpaid balances of install-  
20 ments, with interest until paid. Said certificates shall be  
21 issued to the contractor making the improvements in pay-  
22 ment therefor, upon the contractor's reimbursing the  
23 municipality for those items of the cost and expense ad-  
24 vanced by the municipality and mentioned in section five  
25 hereof. Said certificates shall be assignable by delivery  
26 of the certificates and be enforceable by the holder. The  
27 municipality issuing such certificates shall not be held as  
28 guarantor or in any way liable for the payment thereof.  
29 A notice of the lien of said assessment, referring to the  
30 assessing ordinance or resolution, and setting forth a list  
31 of the property assessed, described respectively as to  
32 amounts of assessment, frontage, location and ownership  
33 of the property, shall be certified by the clerk or recorder  
34 of the municipality to the clerk of the county court of the  
35 county wherein the improvement is located. The county  
36 clerk shall record the same in a proper trust deed book  
37 and index the same in the name of each owner of abutting  
38 property assessed.  
39

2 *Sec. 10. Liens; Payment, Suit for Enforcement; Enforcement; When Service May be Had by Publication.*—The

3 property abutting the portion of the street, alley, ease-  
4 ment or public way improved shall be subject to a lein,  
5 from the date of the ordinance or resolution laying the  
6 assessment, for the payment of the costs of the improve-  
7 ments assessed against said property. From the date of  
8 the assessments the holder of the assessment certificates  
9 shall be the holder of said leins and entitled to enforce  
10 the same in his own name or the name of the municipality  
11 to the extent of the amount, principal and interest, pro-  
12 vided in said certificates, and against the said property,  
13 as to any assessment not paid as and when due. Said  
14 assessment shall be and constitute leins in the hands of  
15 the holders of said certificates upon the respective lots  
16 and lands assessed and shall have priority over all other  
17 liens except those for land taxes due the state, county,  
18 and municipality, and except the leins for pre-existing  
19 special assessments. Said assessments and interest there-  
20 on shall be paid by the owners of the property assessed  
21 as and when the installments are due. The holder of any  
22 certificate may enforce the lien thereof in any proper  
23 suit, and when default in the payment, as and when due,  
24 of any certificate of principal or interest or installment  
25 certificate shall occur and such default may have con-  
26 tinued for more than sixty days, the holder may at his  
27 option declare the whole unpaid balance due and payable  
28 and by proper suit in equity enforce the lein thereof, upon  
29 process issued and served according to law upon the  
30 owner or owners of the land subject to said lien at the  
31 time such suit may be brought as shown by the records  
32 of the clerk of the county court in which said land is  
33 located. Service by publication upon such owner may  
34 be had if, upon affidavit filed with the clerk of the court  
35 where each suit is brought, it appears that the owner of  
36 such land is a nonresident of the State of West Virginia.  
37 Service by publication may also be had upon such owner  
38 upon affidavit filed in said clerk's office that personal  
39 process issued to the sheriff of the county in which said  
40 land is located has been returned "not found" in said  
41 county and if said affidavit also states that the plaintiff in  
42 the suit does not know where the owner is resident.

Sec. 11. *Assessment Against Property of Public, Charitable, Eleemosynary, Educational or Religious Institutions; Duty of Those in Charge to Cause Assessments to be Paid.*—When any of the lots or lands abutting the portion of the street, alley, easement or public way improved consist of property owned or controlled by the state, county, municipality, board of education or other public body, or consist of property owned by, or used for, a church, or religious, charitable, educational or eleemosynary institution for purposes not subject to taxation, such property shall nevertheless be assessed with its proper proportion of the cost of said improvement, and it shall be the duty of those persons having charge of the fiscal affairs of such owner or the management of any such property or institution to make proper arrangements for the payment of, and cause to be paid, such assessments as and when due and payable.

Sec. 12. *Place of Payment; Release.*—Payments of any assessments or installment certificates may be made to the treasurer of the municipality or the holder of the assessment certificates. If payment is made to the treasurer he shall require all interest to be paid which is owed up to the time of payment, and notify the holder of the certificate, if informed of the holder's address, that he has received such payments, and make payment to the holder on presentation for cancellation of the certificate representing such payment. If payment is made to the holder of the certificate, the holder shall deliver to the payor certificates marked "paid" representing the payments made of principal and interest. On presentation to the treasurer for cancellation of all certificates of principal and interest for the whole assessment made against a specific piece of property assessed, the treasurer shall on request execute and deliver a release of the lien of such assessment.

Sec. 13. *Re-assessment for Void, Irregular or Omitted Assessments.*—In the case of the construction of any permanent improvements where an assessment has heretofore been laid or may hereafter be laid for the cost there-

5 of, which said assessment is or shall be void or voidable  
6 by reason of errors, irregularities or defects in the pro-  
7 ceedings under which such improvement was made, or  
8 in case such assessment shall have been made against  
9 the wrong person or property, or shall have been omitted  
10 to be made in a case where the same was proper, it shall  
11 be the duty of the governing body within ten years  
12 after the completion of such improvement, or after any  
13 court shall have declared such assessment invalid, to  
14 cause notice to be given to any person against whom the  
15 cost of said improvement might properly be or have been  
16 assessed, of its intention to lay such assessment and fix-  
17 ing a time and place at which the owner may appear  
18 and show cause against the same. Said notice shall be  
19 served in the manner provided in this article in the  
20 giving of notices in assessment proceedings, or any other  
21 manner provided by law. At the time and place, under  
22 the notice aforesaid, or at any time thereafter, the gov-  
23 erning body shall proceed to lay and levy an assessment  
24 for the cost of such improvement as would have been  
25 lawful under proper proceedings at the time said im-  
26 provement was completed, unless the owner so notified  
27 shall show good cause against the same. The reassessment  
28 so laid shall be a lien upon the property liable therefor  
29 in the manner hereinabove provided from the date of the  
30 completion of the improvement, with interest therefrom,  
31 and proper assessment certificates may be issued, recorda-  
32 tion had, and payment and the lien may be enforced in the  
33 same manner and upon the same terms as would have  
34 been proper at the time of the completion of the said  
35 improvement had the assessment therefor been then prop-  
36 erly laid and levied.

Sec. 14. *Liberal Construction of this Act.*—This article  
2 shall be liberally construed to accomplish the purpose of  
3 providing reasonable, economical and expeditious means  
4 for municipalities to provide permanent improvements  
5 and assure to the contractors making such improvements,  
6 or persons directly or indirectly financing the same, secu-  
7 rity in the payment of the cost and expense of such im-



8 improvements; and nothing in this article shall be construed  
9 as imposing a time limit on the certificate holder for the  
10 enforcement of his rights.

Sec. 15. *Effect on Special and Home Rule Charter Provisions.*—The provisions of all existing municipal charters  
2 and the rights, powers and duties of municipalities there-  
3 under and under existing statutory and other laws in  
4 respect of municipal and public improvements shall con-  
5 tinue and remain in full force and effect, and nothing  
6 herein contained is intended or shall be construed to re-  
7 peal, supersede, suspend or modify any provision of any  
8 special charter or home rule charter of any municipality  
9 in this state.  
10

Sec. 16. *Separability.*—If any provision or part of this  
2 article is declared unconstitutional or invalid such decla-  
3 ration shall in no way affect any other part hereof.

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## CHAPTER 90

(Senate Bill No. 271—By Mr. Eddy)

AN ACT to amend and reenact section one, article twelve, chap-  
ter eight of the code of West Virginia, one thousand nine  
hundred thirty-one, as amended, relating to the acquisi-  
tion and operation of municipal waterworks and extension  
beyond corporate limits.

[Passed March 11, 1949; in effect ninety days from passage. Approved by the  
Governor.]

### Article 12. Waterworks.

#### 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, one thousand nine hundred thirty-one, as  
amended, be amended and reenacted to read as follows:

Section 1. *Acquisition and Operation of Municipal Waterworks; 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 ten-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.

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## CHAPTER 91

(House Bill No. 311—By Mr. Speaker, Mr. Flannery)

AN ACT to amend and reenact section four, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as last amended by chapter one hundred twelve, acts of the Legislature, regular session, one thousand nine hundred forty-seven, relating to the authority of municipalities to issue revenue bonds for combined waterworks and sewerage systems.

[Passed March 5, 1949; in effect from passage. Approved by the Governor.]

### Article 13. Combined Waterworks and Sewerage Systems.

#### Section

#### 4. Ordinance.

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

That section four, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as last amended by chapter one hundred twelve, acts of the Legislature, regular session, one thousand nine hundred forty-seven, be amended and reenacted, to read as follows:

Section 4. *Ordinance.*—The governing body of any municipality availing itself of the provisions of this act

3 shall adopt an ordinance describing in a general way  
4 the contemplated project. If it is intended to include in  
5 the combined waterworks and sewerage system any  
6 existing waterworks or any existing sewerage system,  
7 such ordinance shall determine that it be so included in  
8 such combined system and shall describe in a general  
9 way such existing waterworks or sewerage system to be  
10 included in the combined waterworks and sewerage sys-  
11 tem. Such ordinance shall state the means provided for  
12 refunding any obligation unpaid and outstanding payable  
13 solely from the revenue of any such waterworks or sew-  
14 erage system. Such ordinance shall determine the period  
15 of usefulness of the contemplated project. If it is intended  
16 to acquire or construct a combined waterworks and  
17 sewerage system or any part thereof, or to extend and  
18 improve any such existing combined waterworks and  
19 sewerage system, the ordinance shall describe in a general  
20 way the works or property or system to be acquired or  
21 constructed, or the extensions or improvements to be  
22 made. Such ordinance shall fix the amount of revenue  
23 bonds proposed to be issued, the interest rate or rates,  
24 and any other details in connection with such bonds  
25 deemed advisable. Such ordinance may state that the  
26 bonds, or such ones thereof as may be specified, shall,  
27 to the extent and in the manner prescribed, be subordin-  
28 ated and be junior in standing, with respect to principal  
29 and interest and the security thereof, to such other bonds  
30 as are designated in the ordinance.

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## CHAPTER 92

(House Bill No. 294—By Mr. Doyle)

AN ACT to amend and reenact section four, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, relating to municipal employees eligible for participation in employees' retirement and benefit fund.

[Passed March 12, 1949; in effect from passage. Approved by the Governor.]

## Article 15. Employees' Retirement and Benefit Fund.

### Section

4. Employees eligible for participation in fund.

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

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

#### Sec. 4. *Employees Eligible for Participation in Fund.*—

- 2 Employees eligible for participation in the fund shall in-  
3 clude all employees who are employed by the municipality  
4 on a permanent basis. The following employees, however,  
5 shall not be eligible for participation in the fund:

- 6 (1) Appointive members of administrative boards and  
7 commissions, except employees of such boards and com-  
8 missions;

- 9 (2) Persons employed under contract for a definite pe-  
10 riod or for the performance of a particular special service;

- 11 (3) Employees serving on a part-time basis of less than  
12 one-half time;

- 13 (4) Policemen and firemen who are now covered by a  
14 pension or relief fund;

- 15 (5) Employees who are paid in part by the county, state  
16 or other governmental agency, and only in part by the  
17 municipality;

- 18 (6) Employees who are past sixty years of age and have  
19 less than ten years of service;

- 20 (7) Persons employed after the establishment date of  
21 the fund who are over fifty years of age.

22 The board of trustees of the fund may make determina-  
23 tion as to any person's eligibility to become a member of  
24 the fund.

25 All employees eligible for participation at the effective  
26 date of the fund shall become members of the fund, unless  
27 they file a written election not to become a member within  
28 thirty days after the effective date of the fund: *Provided,*  
29 That no member who has complied with section six of  
30 this article shall be entitled to any benefits under the

31 fund until he has been in the employ of the municipality  
32 for at least five years after the effective date of the fund,  
33 except those who are disabled in the performance of their  
34 duties may participate in the fund in the manner here-  
35 inafter provided: *Provided further*, That the municipality  
36 with the approval of the trustees of said fund may retire  
37 any member prior to the expiration of said five years.

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## CHAPTER 93

(House Bill No. 310—By Mr. Speaker, Mr. Flannery)

AN ACT to amend chapter twenty-five, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, by amending and reenacting section nine thereof and by adding thereto four new sections, to be designated sections twenty-two-a, twenty-two-b, twenty-two-c and twenty-two-d, relating to the authority of municipalities to issue revenue bonds for sewage works and authorizing municipalities to accept loans and grants from the federal government in connection therewith.

[Passed March 5, 1949; in effect from passage. Approved by the Governor.]

### **Sewage Works of Municipal Corporations and Sanitary Districts.**

#### **Section**

- 9. Revenue bonds.
- 22-a. Authority to accept federal grants or loans.
- 22-b. Contracts for abatement of pollution.
- 22-c. Refunding bonds.
- 22-d. Subordination of bonds.

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

That chapter twenty-five, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, be amended by amending and reenacting section nine thereof and by adding thereto four new sections, to be designated sections twenty-two-a, twenty-two-b, twenty-two-c and twenty-two-d, to read as follows:

Section 9. *Revenue Bonds.*—Nothing in this act contained shall be so construed as to authorize or permit any municipality to make any contract or to incur any obligation of any kind or nature except such as shall be payable solely from the funds provided under this act. Funds for the payment of the entire cost of the works, exclusive of any portions of the cost that may be defrayed out of any grant or contribution, shall be provided by the issuance of revenue bonds of the municipality, the principal and interest of which shall be payable solely from the fund herein provided for such payment, and said bonds shall not, in any respect, be a corporate indebtedness of such municipality, within the meaning of any statutory or constitutional limitations thereon. All the details of such bonds shall be determined by ordinance or ordinances of the municipality.

Sec. 22-a. *Authority to Accept Federal Grants or Loans.*  
—The municipality is authorized to accept from any authorized agency of the state and federal government loans or grants for the planning, construction, acquisition, lease or other provision of the works and to enter into agreements with such agency respecting such loans or grants, and any funds made available or paid to the municipality in accordance with any such agreement for loans or grants shall be considered as and deemed to be funds provided under the authority of this act.

Sec. 22-b. *Contracts for Abatement of Pollution.*—When determined by its legislative body to be in the public interest and necessary for the protection of the public health, any municipality is authorized to enter into and perform contracts, whether long-term or short-term, with any industrial establishment for the provision and operation by the municipality of sewerage facilities to abate or reduce the pollution of waters caused by discharges of industrial wastes by the industrial establishment and the payment periodically by the industrial establishment to the municipality of amounts at least sufficient, in the determination of such legislative body, to compensate the municipality for the cost of providing (including pay-

14 ment of principal and interest charges, if any), and of  
15 operating and maintaining the sewerage facilities serv-  
16 ing such industrial establishment.

Sec. 22-c. *Refunding Bonds*.—Any municipality is au-  
2 thorized to issue refunding revenue bonds to refund, pay  
3 or discharge all or any part of its outstanding revenue  
4 bonds, including interest thereon, if any, in arrears or  
5 about to become due. The relevant provisions in this  
6 act pertaining to revenue bonds shall be equally appli-  
7 cable in the authorization and issuance of refunding rev-  
8 enue bonds, including their terms and security, the ord-  
9 inance, the trust indenture, rates, or other aspects of the  
10 bonds.

Sec. 22-d. *Subordination of Bonds*.—Notwithstanding  
2 any other provisions to the contrary in this act, any mu-  
3 nicipality authorizing the issuance of bonds under this  
4 act in an effort to aid in the abatement or reduction of  
5 the pollution of any waters or streams may provide in  
6 the ordinance authorizing the issuance of the bonds and  
7 in any trust indenture pertaining thereto that such bonds,  
8 or any additional bonds that may thereafter be issued  
9 to extend or improve the works, shall, to the extent and  
10 in the manner prescribed, be subordinated and be junior  
11 in standing, with respect to the payment of principal and  
12 interest and the security thereof, to such other bonds  
13 as are designated in the ordinance.

C

## CHAPTER 94

(Com. Sub. for Senate Bill No. 70—Originating in the Senate Committee on  
the Judiciary)

AN ACT to amend article two, chapter fifty-six of the code of  
West Virginia, one thousand nine hundred thirty-one,  
by adding thereto a new section to be numbered section  
eight, providing for the enforcement and collection of  
forfeitures due the state.

[Passed February 28, 1949; in effect ninety days from passage. Approved by the Governor.]

## **Article 2. Notices and Motions.**

### **Section**

#### **8. Collection of forfeitures.**

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

That article two, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, be amended by adding thereto a new section to be numbered section eight to read as follows:

Section 8. *Collection of Forfeitures.*—Unless otherwise  
2 expressly provided by law, any forfeiture payable to the  
3 state under any provision of law may be enforced in the  
4 circuit court or other court of record having jurisdiction  
5 thereof, upon notice of motion for judgment brought in  
6 the name of the state. If such judgment shall be for the  
7 state it shall include the costs of the proceeding, and a  
8 docket fee of ten dollars for the prosecuting attorney's  
9 services, payable into the county treasury, which docket  
10 fee shall be taxed as part of the costs.

## **CHAPTER 95**

(House Bill No. 386—By Mr. Hudgins, by request)

AN ACT to amend and reenact section twenty-six, article three, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to rehearing after judgment or decree in cases involving service by publication or non-personal service.

[Passed March 12, 1949; in effect from passage. Approved by the Governor.]

## **Article 3. Writs, Process and Order of Publication.**

### **Section**

#### **26. Rehearing in case of non-personal service.**

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

That section twenty-six, article three, chapter fifty-six of



the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**Section 26. *Rehearing in Case of Non-Personal Service.***

2 —Any unknown party or other defendant who was not  
3 served with process in this state, and did not appear  
4 in the case before the date of such judgment, decree  
5 or order or the representative of such, may, within two  
6 years from that date, if he be not served with a copy  
7 of such judgment, decree or order more than eight  
8 months before the end of such two years, and if he  
9 was so served, then within eight months from the time  
10 of such service, file his petition to have the proceed-  
11 ings reheard in the manner and form provided by sec-  
12 tion forty-three, article seven, chapter thirty-eight of  
13 this code, and not otherwise; and all the provisions of  
14 that section are hereby made applicable to proceed-  
15 ings under this section: *Provided, however,* That nothing  
16 contained in that section or in this section shall be  
17 so construed as to authorize any court or judge to in-  
18 clude, in the decree granted in a divorce suit, any pro-  
19 hibition against the remarriage of either party thereto,  
20 except such prohibition as may be authorized by the  
21 provisions of section twenty-two, article two, chapter  
22 forty-eight of this code.

## CHAPTER 96

(Senate Bill No. 67—By Mr. Sinsel)

A BILL to amend article three, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new section to be designated section thirty-two, providing that the writ of process commencing any action at law or suit in equity shall be a part of the record, without oyer.

[Passed February 15, 1949; in effect ninety days from passage. Approved by the Governor.]

### **Article 3. Writs, Process and Order of Publication.**

**Section**

32. Process part of record, without oyer.

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

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

Section 32. *Process Part of Record, Without Oyer.*—

- 2 The writ or process commencing any action at law or suit
- 3 in equity shall be a part of the record, without oyer
- 4 thereof.

## CHAPTER 97

(House Bill No. 134—By Mr. Speaker, Mr. Flannery)

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article two-a, and by amending article three by adding thereto a new section, to be designated section four-a, and by amending and reenacting sections three to eight, inclusive, of said article three; by amending and reenacting sections one, three, four and five, article eleven; and by amending and reenacting sections one to five, inclusive, and sections thirteen and fifteen, article sixteen; relating to the creation, organization, powers and duties of a medical licensing board for the licensing of physicians and surgeons, chiropodists, and chiropractors; providing for the licensing, revocation and suspension of license, and biennial registration of physicians and surgeons, and for the licensing and the revocation and suspension of license of chiropodists and chiropractors, all relating to the licensure by the medical licensing board of physicians and surgeons, chiropodists and chiropractors.

[Passed February 21, 1949; in effect July 1, 1949. Approved by the Governor.]

### Article

#### 2-a. Medical Licensing Board.

##### 3. Physicians and Surgeons.

##### 11. Chiropodists.

##### 16. Chiropractors.

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

That chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, to be designated article two-a; by amending article three by adding thereto a new section, to be designated section four-a; and by amending and reenacting sections three to eight, inclusive, of said article three; by amending and reenacting sections one, three, four and five, article eleven; and by amending and reenacting sections one to five, inclusive, and sections thirteen and fifteen, article sixteen; all to read as follows:

### **Article 2-a. Medical Licensing Board**

#### **Section**

1. Medical licensing board; creation and membership.
2. Medical licensing board; powers and duties.
3. Medical licensing board; organization and officers.
4. State director of health to act as secretary of medical licensing board.

Section 1. *Medical Licensing Board; Creation and Membership.*—There is hereby created a medical licensing board to be known as "The Medical Licensing Board of West Virginia".

The medical licensing board shall consist of eleven members. One of such members shall be the state director of health ex officio whose term as such member shall continue for the period that he holds office as state director of health. The other ten members shall be appointed by the governor with the advice and consent of the senate. The term of all members, except the state director of health, shall be five years, except that the persons originally appointed shall be designated to serve, two for a term of one year, two for a term of two years, two for a term of three years, two for a term of four years, and two for a term of five years. Upon the expiration of such initial appointments, the term of each new appointee shall be five years, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Each member shall serve until the appointment and qualifica-

23 tion of his successor. Before appointing any member,  
24 the governor shall request the state professional society of  
25 the profession practiced by any proposed appointee to  
26 furnish to the governor a full and complete report con-  
27 cerning the qualifications and suitability of the proposed  
28 appointee.

29 Of the members to be appointed by the governor, six  
30 shall be physicians or surgeons holding the degree of doc-  
31 tor of medicine, two shall be chiropodists, and two shall  
32 be chiropractors. All persons appointed to membership  
33 on the board shall be citizens of this state and shall have  
34 been citizens and residents of the state for at least five  
35 years prior to the date of their appointment. Each  
36 such person shall have been duly licensed to practice  
37 his profession in this state on the date of his appoint-  
38 ment and shall have been so licensed and have been  
39 actively practicing his profession for at least five years  
40 immediately preceding the date of such appointment.

41 The chiropodists who are members of the medical  
42 licensing board, shall participate in its proceedings and  
43 vote as members of the board only on matters per-  
44 taining to the licensure, examination, or suspension, re-  
45 vocation, or reinstatement of the licenses of chiropodists.

46 The chiropractors who are members of the medical li-  
47 censing board, shall participate in its proceedings and vote  
48 as members of the board only on matters pertaining to  
49 the licensure, examination, or suspension, revocation or  
50 reinstatement of the licenses of chiropractors.

51 No more than three doctors of medicine, one chiroprac-  
52 tor and one chiropodist appointed by the governor as  
53 members of the board shall belong to the same political  
54 party. No person shall be eligible for membership on the  
55 board who is a member of any political party executive  
56 committee, or, with the exception of the state director of  
57 health, who holds any public office or public employment  
58 under the federal government or under the government  
59 of this state, or any of its political subdivisions, or who  
60 is an appointee or employee of the state board of health.

61 All members shall be eligible for reappointment.

62 In making appointments to the board, the governor  
63 shall, so far as may be possible and practicable, select the  
64 several members from different geographical sections of  
65 the state.

66 No member may be removed from office except for of-  
67 ficial misconduct, incompetence, neglect of duty or gross  
68 immorality: *Provided, however,* That the expiration or  
69 revocation of the professional license of a member of the  
70 board shall be cause for his removal: *Provided further,*  
71 That the state director of health shall cease to be a mem-  
72 ber of the medical licensing board upon the expiration  
73 or termination of his appointment as state director of  
74 health.

Sec. 2. *Medical Licensing Board; Powers and Duties.*—

2 The medical licensing board of West Virginia shall as-  
3 sume, carry on, and succeed, to all the duties, rights,  
4 powers, obligations and liabilities heretofore belonging  
5 to, exercised by, or assumed by the public health council,  
6 with regard to the licensure of physicians and surgeons,  
7 chiropractors and chiropodists.

8 The medical licensing board shall examine all qualified  
9 applicants for license to practice medicine and surgery,  
10 chiropody and chiropractic, and it shall license all such ap-  
11 plicants who are qualified under applicable statutes and  
12 who pass any examination that may be required by stat-  
13 ute or by any legally adopted rule or regulation.

14 The said board shall have the power to make such  
15 examination of all applicants appearing before it for any  
16 type of license as may be necessary to determine that the  
17 applicant is qualified. The said board shall also have the  
18 power to revoke or suspend any license issued by it, for  
19 cause, after having given the person whose license is  
20 sought to be revoked or suspended, an opportunity to be  
21 heard in the manner provided by section eight, article  
22 one, chapter thirty of this code. It shall have the power  
23 to reinstate any license revoked or suspended by it.

24 The said board is authorized and empowered to hold  
25 and conduct hearings and investigations on the issuance,  
26 suspension, revocation, or reinstatement of licenses.

27 The said board shall have the power to hire, fix the  
28 compensation of, and discharge such employees as are  
29 necessary for the performance of the powers and duties  
30 vested in the said board by law.

Sec. 3. *Medical Licensing Board; Organization and*  
2 *Officers.*—The board shall organize by electing from  
3 among its members, a chairman, who shall serve as such  
4 for a period of two years. Such chairman shall have the  
5 power to act for and in the name of the board in all  
6 matters within the lawful powers of the board and duly  
7 authorized by a majority of its members.

8 An office shall be established and maintained by the  
9 board in the city of Charleston. In addition, the board  
10 may establish and maintain such other offices within the  
11 state as it may deem necessary or expedient.

Sec. 4. *State Director of Health to Act as Secretary of*  
2 *Medical Licensing Board.*—The state director of health,  
3 in addition to being a member of the medical licensing  
4 board, shall act as its secretary and shall be in charge of  
5 its offices and responsible to the board for the maintenance of the said offices, and the preparation of application  
6 forms, licenses, reports and all other papers or documents  
7 which may be required by the board in the performance  
8 of its duties. He shall, together with the chairman of the  
9 board, sign all licenses, reports and other documents.

### Article 3. Physicians and Surgeons

#### Section

3. Examination by medical licensing board.
4. Who permitted to practice medicine and surgery in this state; licensing of licensed practitioners from other states; permits to practice in prescribed areas.
- 4-a. Biennial registration of physicians and surgeons.
5. Examinations; certificates; adherents of particular schools or theories of medicine.
6. Refusal to issue, suspension or revocation of license.
7. Fees.
8. Division of fees by physicians or surgeons; penalties; revocation of certificate.

Section 3. *Examination by Medical Licensing Board.*—  
2 The medical licensing board of West Virginia shall examine all qualified applicants for license to practice  
3 medicine and surgery in this state, and issue certificates  
4

5 of license to all applicants who are legally entitled to  
6 receive the same; and said certificates shall be signed by  
7 the chairman of the said board and by the director of  
8 health as secretary thereof.

Sec. 4. *Who Permitted to Practice Medicine and Sur-*  
2 *gery in This State; Licensing of Licensed Practitioners*  
3 *From Other States; Permits to Practice in Prescribed*  
4 *Areas.*—The following persons and no others shall here-  
5 after be permitted to practice medicine and surgery in  
6 this state: (a) All such persons as shall be legally en-  
7 titled to practice medicine and surgery in this state at  
8 the time of the adoption of this act; (b) all such persons  
9 as shall be graduates of class "A" medical schools, as  
10 classified by the Council on Medical Education and Hos-  
11 pitals of the American Medical Association, the American  
12 Association of Medical Colleges, the American Institute  
13 of Homeopathy and the National Eclectic Medical Asso-  
14 ciation, and then only from such schools, when so classi-  
15 fied, as require, as a condition to entrance upon the study  
16 of medicine, at least two years of academic work of col-  
17 legiate grade in a standard college of arts and sciences of  
18 equal rank with the college of arts and sciences in the  
19 West Virginia University, and who shall pass an exami-  
20 nation before the medical licensing board and shall re-  
21 ceive a certificate therefrom as hereinafter provided: *Pro-*  
22 *vided, however,* That the said board, or a majority of  
23 them, may accept in lieu of an examination, the certificate  
24 of the national board of medical examiners, or the cer-  
25 tificate of license to practice medicine and surgery legally  
26 granted by the state board of registration or examination  
27 or licensing board of another state, territory or any for-  
28 eign country, whose standard of qualification for the prac-  
29 tice of medicine and surgery is equivalent to that of this  
30 state, and grant to such applicant a certificate of license  
31 to practice medicine and surgery in this state, provided  
32 such state, territory or foreign country accords like privi-  
33 leges to licentiates of this state: *Provided further,* That  
34 whenever in the judgment of the medical licensing board  
35 a condition exists in which medical service may be re-  
36 quired, the said board is authorized to grant permits for

37 the practice of medicine to qualified physicians in pre-  
38 scribed areas, and such permits shall be subject to revoca-  
39 tion when the agreement, under which they were issued,  
40 has been violated.

Sec. 4-a. *Biennial Registration of Physicians and Sur-  
2 geons.*—Every person who, on or before the thirty-first  
3 day of August, one thousand nine hundred forty-nine, is  
4 licensed as a physician or surgeon to practice medicine  
5 and surgery in this state, shall, on or before the said  
6 thirty-first day of August, one thousand nine hundred  
7 forty-nine, make application to the medical licensing  
8 board for registration, and shall be registered by the said  
9 board, as the holder of such license, which registration  
10 shall be for the period ending on the thirtieth day of  
11 June, one thousand nine hundred fifty-one. On or before  
12 the said thirtieth day of June, one thousand nine hundred  
13 fifty-one, and biennially thereafter, on or before the thir-  
14 tieth day of June of each biennial period, every person  
15 licensed as a physician or surgeon in this state, shall apply  
16 to the said board for registration, or a renewal of registra-  
17 tion, as such license holder: *Provided*, That no registration  
18 shall be required of any holder of a certificate of licensure  
19 for the biennial period, or any portion thereof, during  
20 which such certificate is issued.

21 Each applicant for registration or renewal thereof shall  
22 remit to the board, with his application, a fee of two  
23 dollars.

24 The failure of any person to comply with the provisions  
25 of this section shall operate automatically, and without  
26 further proceedings, to cancel the certificate of such per-  
27 son, and the license issued thereunder. Continued prac-  
28 tice by any such person after such cancellation of his  
29 certificate and license shall constitute practicing without  
30 a license, and any person so practicing shall be subject to  
31 all of the penalties provided by law for practicing  
32 without a license.

33 Any certificate and license cancelled pursuant to the  
34 provisions of this section, and not for any other reason,  
35 shall be reinstated by the said board upon submission to  
36 it of an application for registration by the person whose



37 certificate has been cancelled, together with current and  
38 delinquent fees, and ten dollars reinstatement fee.

Sec. 5. *Examinations; Certificates; Adherents of Particular Schools or Theories of Medicine.*—The medical  
2 licensing board shall, at such times as a majority of them  
3 deem proper, hold examinations for the licensing of appli-  
4 cants for license to practice medicine and surgery in this  
5 state. No fewer than two examinations shall be held  
6 during the year, at such place in the state as may be  
7 determined by the medical licensing board. At such ex-  
8 amination written and oral questions shall be submitted  
9 to the applicants, covering all the essential branches of  
10 the sciences of medicine and surgery, and the examination  
11 shall be a thorough and decisive test of the knowledge  
12 and ability of the applicant. The chairman and secretary  
13 of the board shall issue certificates to all who successfully  
14 pass the said examination and to all whose certificates  
15 said board, or a majority of them, shall accept in lieu  
16 of an examination, as hereinbefore provided. Such cer-  
17 tificates shall be deemed licenses to practice medicine and  
18 surgery in all their branches in this state. The medical  
19 licensing board shall give reasonable notice of the time  
20 and place of holding such examinations in at least three  
21 newspapers of general circulation in this state, and all  
22 such persons wishing to present themselves for examina-  
23 tion shall notify the secretary and comply with the rules  
24 of the board. No applicant for license to practice medicine  
25 and surgery in this state shall be rejected because of his  
26 adherence to any particular school or theory of medicine.  
27 The medical licensing board may call to its assistance in  
28 the examination of any applicant who professes the  
29 homeopathic or eclectic school of medicine, a homeopathic  
30 or eclectic physician entitled to practice medicine in this  
31 state under this article, and such homeopathic or eclectic  
32 physician so called to the assistance of the board shall be  
33 allowed the same per diem and actual expenses incurred  
34 as are allowed the regular members of the said board.  
35

Sec. 6. *Refusal to Issue, Suspension or Revocation of License.*—The medical licensing board may refuse to  
2 grant a certificate of license to a person guilty of felony  
3

4 or gross immorality or addicted to drunkenness or the  
5 habitual use of narcotic drugs, and may suspend or revoke  
6 a certificate for like cause, or for malpractice, or for  
7 fraud in procuring the certificate; but no such refusal,  
8 suspension or revocation shall be ordered by reason of  
9 the individual belonging to or practicing in any partic-  
10 ular school or system of medicine.

Sec. 7. *Fees.*—The medical licensing board shall be  
2 entitled to charge and collect the following fees, in addi-  
3 tion to those provided in article one of this chapter: For  
4 granting to a licensed physician or surgeon from another  
5 state, territory or foreign country, a license to practice  
6 medicine in this state, under the provisions of section  
7 four of this article, one hundred dollars; for a reciprocal  
8 indorsement, ten dollars.

Sec. 8. *Division of Fees by Physicians or Surgeons;*  
2 *Penalties; Revocation of Certificate.*—It shall be unlawful  
3 for any physician or surgeon in this state, directly or  
4 indirectly, to divide, or agree to divide, any fee or com-  
5 pensation of any sort whatsoever, charged for a surgical  
6 operation or for medical services, with any other physi-  
7 cian, surgeon or other person who brings, sends or recom-  
8 mends a patient to such surgeon or physician for treat-  
9 ment, without the express knowledge and consent,  
10 previously had, of the person paying such fee or compen-  
11 sation, or against whom the same may be charged. It  
12 shall be unlawful for any physician, surgeon or other  
13 person residing in this state to accept any fee or other  
14 compensation from any other surgeon, physician or other  
15 person not residing in this state for taking, sending or  
16 recommending a patient for treatment to such nonresi-  
17 dent physician, surgeon or other person. Any person  
18 violating the provisions of this section shall be guilty of  
19 a misdemeanor, and, upon conviction thereof, shall be  
20 fined not less than one hundred nor more than one thou-  
21 sand dollars for each offense, and in the discretion of the  
22 court, may be imprisoned in the county jail not to exceed  
23 twelve months in addition to said fine. If any person  
24 shall be convicted of a second offense under the provisions  
25 of this section, the medical licensing board shall revoke

- 26 the certificate licensing such person to practice medicine  
27 and surgery in this state.

## Article 11. Chiropodists

### Section

1. Chiropody; license required.
3. Qualifications of applicant for license.
4. Examination for license; issuance of license.
5. Offenses; penalties.

Section 1. *Chiropody; License Required.*—It shall be  
2 unlawful for any person to practice or offer to practice  
3 in this state the branch of medicine known as chiropody,  
4 as hereinafter defined, unless duly licensed so to do by  
5 the medical licensing board of this state, after examina-  
6 tion conducted by such board or a committee thereof,  
7 under rules and regulations prepared and promulgated  
8 by it, except as hereinafter provided: *Provided, however,*  
9 That the provisions of this section shall not apply to any  
10 person legally entitled to practice chiropody in this state  
11 at the time of the adoption of this act.

Sec. 3. *Qualifications of Applicant for License.*—An ap-  
2 plicant for license shall furnish to the medical licensing  
3 board satisfactory proof that he is: (a) Twenty-one years  
4 of age or over; (b) of good moral character; (c) a grad-  
5 uate of a school of chiropody registered by the state  
6 department of education as being of proper standard, or  
7 that he has been in the practice of chiropody in some  
8 other state for at least five years, and of good standing  
9 in such state, in which said state an examination is re-  
10 quired by law equal to the requirements of this state,  
11 and that said applicant has taken the examination in said  
12 state and received a license therein; (d) possessed of a  
13 minimum education equivalent to two years' attendance  
14 at a high school recognized by the state department of  
15 education as being of proper standard; (e) a bona fide  
16 resident of the state of West Virginia at the time of appli-  
17 cation.

Sec. 4. *Examination for License; Issuance of License.*—  
2 The medical licensing board shall conduct examinations  
3 for license to practice chiropody at the times and places  
4 designated by it for conducting examinations for license

5 to practice medicine. Examinations shall be in English,  
6 and in writing, and shall be of a scientific and practical  
7 character. They shall cover the subjects of anatomy and  
8 physiology of the foot, chemistry, materia medica, thera-  
9 peutics and minor surgery, including bandaging. The  
10 medical licensing board shall issue licenses to practice  
11 chiropody to successful applicants therefor.

Sec. 5. *Offenses; Penalties.*—Whoever, not being law-  
2 fully authorized to practice chiropody within the state of  
3 West Virginia, holds himself out as a practitioner of  
4 chiropody, or advertises himself as such, or whoever  
5 practices chiropody under a false or assumed name, or  
6 under a name other than that under which he has license  
7 to practice chiropody as aforesaid, or whoever imper-  
8 sonates another practitioner of a like or a different name,  
9 or whoever lends his name or his professional connection  
10 with anyone who has been convicted of any offense, as  
11 herein provided, shall be guilty of a misdemeanor, and,  
12 upon conviction thereof, shall be fined not less than fifty  
13 nor more than two hundred dollars, or confined in the  
14 county jail not less than one nor more than four months,  
15 or both, for each and every offense, and in addition, the  
16 medical licensing board may suspend or revoke his license  
17 for an indefinite period, but for not less than six months.  
18 A person so convicted shall not be entitled to any fee  
19 for services rendered, and, if a fee has been paid, the  
20 patient or guardian or heir may recover the same as debts  
21 of like amount are now recovered by law.

## Article 16. Chiropractors

### Section

1. Chiropractic; license required.
2. Application for license; qualifications of applicant.
3. Examination by medical and chiropractic members of medical licensing board.
4. Licensing chiropractors from other states.
5. Refusal to issue, suspension or revocation of license.
13. Unlawful to practice chiropractic without license.
15. Duties of prosecuting attorneys and secretary of medical licensing board.

Section 1. *Chiropractic; License Required.*—It shall be  
2 unlawful for any person to practice, or offer to practice, in  
3 this state chiropractic, as hereinafter defined, unless duly

4 licensed to do so by the medical licensing board of this  
5 state, after examination conducted by such board or a  
6 committee thereof, under rules and regulations prepared  
7 and promulgated by it, except as hereinafter provided:  
8 *Provided, however,* That the provisions of this section  
9 shall not apply to any person legally entitled to practice  
10 chiropractic in this state at the time of the adoption of  
11 this act.

Sec. 2. *Application for License; Qualifications of Applicant.*—Any person wishing to practice chiropractic in  
2 this state shall apply to the secretary of the medical licen-  
3 sing board for a license so to practice. Each applicant shall  
4 be a graduate of a chiropractic school or college recognized  
5 by the American Chiropractic Association, or other recog-  
6 nized national chiropractic society, which teaches a resi-  
7 dent course of at least three calendar years of eight months  
8 each and requires active attendance upon the same, and  
9 shall be a graduate of an accredited high school giving  
10 a four-year course or have an education equivalent to  
11 the same, and shall have attended for at least two years  
12 an academic college equal in standing to the West Vir-  
13 ginia university, as preliminary education.

14 Each application shall be accompanied by a certificate  
15 from the school or college attended by the applicant, which  
16 certificate shall set forth in full the training of said appli-  
17 cant, showing his studies and the length of his clinical  
18 practice. The medical licensing board shall require of all  
19 applicants satisfactory evidence of good moral character.  
20

Sec. 3. *Examination by Medical and Chiropractic Mem-  
2 bers of Medical Licensing Board.*—Applicants to practice  
3 chiropractic in this state shall be examined by the medical  
4 physicians who are members of the state medical licensing  
5 board in the following subjects: Anatomy, histology,  
6 physiology, pathology, symptomatology, physical diag-  
7 nosis, hygiene, sanitation, chemistry and bacteriology.  
8 The chiropractic members of the medical licensing  
9 board shall give an examination in the following subjects:  
10 Chiropractic philosophy, chiropractic analysis, nerve  
11 tracing, palpation and the art of adjusting.

12 All applicants shall be required to secure an average  
13 grade of eighty per cent in all subjects: sixty-five per  
14 cent shall be the minimum grade in any subject.

Sec. 4. *Licensing Chiropractors From Other States.*—

2 Persons licensed to practice chiropractic under the laws  
3 of any other state having requirements equivalent to those  
4 of this article, and extending like privileges to practi-  
5 tioners of this state, may in the discretion of the medical  
6 licensing board, be licensed to practice in this state with-  
7 out examination.

Sec. 5. *Refusal to Issue, Suspension or Revocation of*

2 *License.*—The medical licensing board may refuse to  
3 grant, or may suspend or revoke, a license to practice  
4 chiropractic in this state upon any of the following  
5 grounds, to-wit: The employment of fraud or deception  
6 in applying for a license or in passing the examination  
7 provided for in this article; the practice of chiropractic  
8 under a false or an assumed name or the impersonation  
9 of another practitioner of like or different name; the con-  
10 viction of a crime involving moral turpitude; or habitual  
11 intemperance in the use of intoxicating liquors or nar-  
12 cotic drugs. In addition to the above stated grounds, the  
13 medical licensing board shall revoke or refuse to grant  
14 a license to anyone practicing, under the guise of chiro-  
15 practic, any health science or mode of healing other than  
16 chiropractic as defined in this article.

Sec. 13. *Unlawful to Practice Chiropractic Without Li-*

2 *cense.*—No person shall practice chiropractic in this state  
3 without first having obtained a license so to do, or after  
4 revocation and before renewal, or during suspension, of  
5 such license as provided in this article.

Sec. 15. *Duties of Prosecuting Attorneys and Secretary*

2 *of Medical Licensing Board.*—It shall be the duty of the  
3 several prosecuting attorneys of this state to enforce the  
4 provisions of this article, and it shall be the duty of the  
5 secretary of the medical licensing board, under the direc-  
6 tion of said board, to aid such attorneys in such enforce-  
7 ment.

## CHAPTER 98

(House Bill No. 25—By Mr. Hudgins and Mr. Overton)

AN ACT to amend and reenact section nine, article eight, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, enumerating certain offenses under the law governing the practice of optometry, prescribing penalties therefor and conferring concurrent jurisdiction in such cases upon justices of the peace.

[Passed February 21, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 8. Optometrists.

#### Section

9. Offenses; penalties; jurisdiction of justices.

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

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

#### Section 9. Offenses; Penalties; Jurisdiction of Justices.

2 —Each of the following shall constitute a misdemeanor  
3 punishable, upon conviction, for the first offense, by a  
4 fine of not less than one hundred nor more than two  
5 hundred dollars, and, upon conviction for a second or  
6 subsequent offense, by a fine of not less than two hun-  
7 dred nor more than five hundred dollars, or by imprison-  
8 ment for not less than thirty nor more than ninety days,  
9 or by both such fine and imprisonment, at the discre-  
10 tion of the court: The practice of, or an attempt to prac-  
11 tice, optometry, without a certificate of registration  
12 as a registered optometrist, except as hereinbefore pro-  
13 vided; permitting any person in one's employ, super-  
14 vision or control, to practice optometry, unless such per-  
15 son has a certificate of registration as a registered op-  
16 tometrist when such certificate is required by this arti-  
17 cle; the obtaining of, or an attempt to obtain, a certifi-  
18 cate of registration, or practice in the profession, or  
19 money, or any other thing of value, by fraudulent mis-

20 representation; the making of any willfully false oath  
21 or affirmation, whenever an oath or affirmation is re-  
22 quired by this article; the violation of the provisions of  
23 section six of this article.

24 Justices of the peace shall have concurrent jurisdiction  
25 with circuit and criminal courts for the enforcement of  
26 this article.

## CHAPTER 99

(Senate Bill No. 193—By Mr. Wylie)

AN ACT providing for the examination and licensing for the practice of medicine and surgery in this state of persons otherwise entitled thereto except for the fact that the medical school from which such persons graduated was not at the time of graduation a class "A" medical school but which school has subsequently been so classified.

[Passed March 11, 1949; in effect ninety days from passage. Approved by the Governor.]

### Section

1. Examination and licensing for practice of medicine and surgery, persons otherwise entitled thereto except for the fact that the medical school from which such persons graduated was not a class A medical school.

WHEREAS, There is great need in West Virginia for more well trained physicians and surgeons; and

WHEREAS, Many West Virginians through lack of facilities in their native state have been forced to seek medical education and training elsewhere; and

WHEREAS, Due to certain technical requirements in effect at the time of their graduation these persons cannot be admitted to practice their profession in their native state; therefore,

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

- Section 1. *Examination and Licensing for Practice of*  
2 *Medicine and Surgery, Persons Otherwise Entitled There-*



3 to Except for the Fact that the Medical School from  
4 Which Such Persons Graduated Was Not a Class A Med-  
5 ical School.—Any citizen of the state of West Virginia  
6 who shall have graduated from a medical school on or  
7 after January first, one thousand nine hundred forty-four,  
8 and who has met all the requirements of law pertaining  
9 to education and training entitling such person to an  
10 examination by and subsequent license from the appro-  
11 priate state board or agency for the practice of medicine  
12 and surgery in this state, except that such medical school  
13 was not at the time of such graduation a class “A” medi-  
14 cal school as defined by statute in such case, shall never-  
15 theless, be entitled to take such examination and upon  
16 passing be issued such license, in those cases wherein  
17 such medical school has, prior to the thirty-first day of  
18 December, one thousand nine hundred forty-eight, been  
19 classified as such class “A” medical school.

20 All acts or parts of acts inconsistent herewith are here-  
21 by repealed.

## CHAPTER 100

(Senate Bill No. 19—By Mr. Bowers)

A BILL to amend and reenact section seven, article six, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to general relief grants.

[Passed February 15, 1949; in effect July 1, 1949. Approved by the Governor.]

### Article 6. General Relief.

#### Section

7. Disposition by county council.

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

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

Section 7. *Disposition by County Council.*—The county council shall consider the record and the determination of the county director. The council shall either grant or refuse relief. If it grants relief, it shall specify the type and amount of relief to be given. No recipient of a general relief grant who obtains compensable employment shall, by reason of such employment, suffer a reduction in the amount of such grant, unless his earnings from the employment total more than an amount equal to the grant. If his earnings total more than such grant, the amount of the grant may be reasonably reduced, but not to the point of discouraging the recipient thereof from seeking and keeping compensable employment.

## CHAPTER 101

(House Bill No. 133—By Mr. Speaker, Mr. Flannery)

**AN ACT** to amend chapter sixteen of the code of West Virginia one thousand nine hundred thirty-one, as amended, by repealing article one and enacting in lieu thereof a new article one, and by amending and reenacting sections three and four, article two; sections one, two, five, six, and twelve, article three; sections two and seventeen, article five; section one, article five-a; section nine, article five-b, and section three, article seven; establishing the organization of the state department of health, creating a state board of health, establishing the membership, organization, powers and duties of said board, providing for the employment by the said board, and establishing the qualifications, powers, and duties of a director of health and other employees, authorizing joint local boards of health, and vesting in the state board of health the power and duty to administer the public health laws of the state, all relating to public health.

[Passed February 21, 1949; in effect July 1, 1949. Approved by the Governor.]

### Article

1. State Department of Health.
2. Local Health Officers.

3. Prevention and Control of Communicable and Infectious Diseases.
5. Vital Statistics.
- 5-a. Cancer Control.
- 5-b. Hospitals and Similar Institutions.
7. Pure Food and Drugs.

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

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by repealing article one and enacting in lieu thereof a new article one, and by amending and reenacting sections three and four article two; sections one, two, five, six, and twelve, article three; sections two and seventeen, article five; section one, article five-a; section nine, article five-b, and section three, article seven; all to read as follows:

## **Article 1. State Department of Health.**

### **Section**

1. Composition of department.
2. Board of health; membership.
3. Board of health; powers and duties.
4. Board of health; organization, reports, and offices.
5. Director of health; appointment, qualifications, compensation.
6. Director of health; duties and powers.
7. Divisions of department; directors of divisions.
8. Administrative and other employees of the department of health.
9. Supervision over local sanitation.
10. Supervision of state health institutions.
11. State laboratory; branches.
12. Expenditures of state department of health.
13. Disposition of moneys received by state director of health; report to auditor.
14. State department of health authorized to cooperate with federal government in hospital construction program.
15. Federal aid.
16. Investigations, hearings, power to subpoena witness; self crimination.
17. State board of health, orders, notices and opportunity for hearing.
18. Judicial review of action by state board of health.
19. Meaning of words "public health council" and "commissioner of health".
20. Penalties for violating of provisions of this article.
21. Severability.

Section 1. *Composition of Department.*—There shall be  
2 a state department of health, which shall consist of a  
3 board of health, a director of health; directors of divisions,  
4 and other employees as hereinafter provided.

Sec. 2. *Board of Health; Membership.*—There shall be  
2 a state board of health, to be known as the West Virginia

3 board of health, which shall be a corporation and as such  
4 may contract and be contracted with, plead and be im-  
5 pleaded, sue and be sued, and have and use a common  
6 seal. The state board of health shall consist of nine mem-  
7 bers, who shall be appointed by the governor, by and with  
8 the advice and consent of the senate. Three members of  
9 the board shall be physicians or surgeons holding the  
10 degree of doctor of medicine, one shall be a dentist, one  
11 shall be an osteopathic physician, one shall be a pharma-  
12 cist, one shall be chosen as the representative of the hos-  
13 pitals licensed in the state of West Virginia and two shall  
14 be representative citizens, neither of which said repre-  
15 sentative citizens shall be an employee of, or connected  
16 in any way with, any hospital licensed in this state, and  
17 neither of whom shall be a member of any of the pro-  
18 fessions named above.

19 All persons appointed to membership on the state board  
20 of health shall be citizens of this state and shall have been  
21 such citizens and residents of the state for at least five  
22 years prior to the date of their appointment. Every pro-  
23 fessional member of the said board shall be duly licensed  
24 to practice his profession in this state on the date of his  
25 appointment and shall have been so licensed and have  
26 been actively practicing his profession for at least five  
27 years immediately preceding the date of such appoint-  
28 ment. Before appointing any professional member, the  
29 governor shall request the state professional society of  
30 the profession practiced by any proposed appointee to  
31 furnish to the governor a full and complete report con-  
32 cerning the qualifications and suitability of the proposed  
33 appointee. All members of the board shall be appointed  
34 for terms of nine years each, except that the persons  
35 originally appointed, shall be appointed to serve for  
36 designated terms beginning on the first day of July, one  
37 thousand nine hundred forty-nine, and continuing for one,  
38 two, three, four, five, six, seven, eight, and nine years  
39 respectively. Upon the expiration of such initial appoint-  
40 ments the term of each new appointee shall be nine years.  
41 Any vacancy on the board shall be filled by the governor  
42 by appointment for the unexpired term.

43 No more than five of the members of the board shall

44 belong to the same political party. Not less than one nor  
45 more than two members shall be appointed from the same  
46 congressional district. No person shall be eligible for  
47 appointment to membership on the state board who is  
48 a member of any political party executive committee, or  
49 who holds any public office or public employment under  
50 the federal government or under the government of  
51 this state or any of its political subdivisions, or who is  
52 an appointee or employee of the board. All members  
53 shall be eligible for reappointment.

54 No member may be removed from office by the gov-  
55 ernor except for official misconduct, incompetence, neg-  
56 lect of duty or gross immorality and then only in the  
57 manner prescribed by law for the removal by the gov-  
58 ernor of state elective officers: *Provided, however,* That  
59 the expiration or revocation of the professional license  
60 of any professional member of the board shall be cause  
61 for his removal.

62 No member shall receive any compensation for his  
63 services but each shall be reimbursed for actual and  
64 necessary travel and other expenses incurred by him in  
65 the performance of his duties as a member of the board.

Sec. 3. *Board of Health; Powers and Duties.*—The  
2 state board of health shall assume, carry on, and succeed  
3 to, all the duties, rights, powers, obligations and liabilities  
4 heretofore belonging to, exercised by, or assumed by  
5 the state department of health, the public health council,  
6 and the commissioner of health pursuant to statutory  
7 authority heretofore existing and as changed or modified  
8 by the provisions of this article: *Provided, however,*  
9 That the said board shall not succeed to, or exercise any  
10 of the powers heretofore exercised by the public health  
11 council with regard to the licensure of physicians, sur-  
12 geons, chiropradists, and chiropractors.

13 The state board of health shall have the power to ac-  
14 quire by condemnation or otherwise land or buildings  
15 and to hold title thereto, for the use and benefit of any  
16 state institution subject to its control and management,  
17 and, by and with the consent of the governor, to sell, ex-  
18 change or otherwise convey any property title to which  
19 is acquired or held by it. Any condemnation proceed-

20 ing instituted by the said board shall be conducted pur-  
21 suant to the provisions of chapter fifty-four of this code.

22 The state board shall have supervision and control of  
23 the business, fiscal, administrative and medical affairs of  
24 the department of health and shall have advisory medical  
25 supervision of all of the state institutions set forth in  
26 section ten of this article. It shall have authority to em-  
27 ploy, fix the compensation of, and discharge all persons  
28 necessary for the proper execution and enforcement of  
29 the laws of this state pertaining to public health, and the  
30 efficient and proper discharge of the duties imposed upon,  
31 and execution of the powers vested in, the said board by  
32 law. It may place any or all of its employees under the  
33 merit system, provided that the same may be done in  
34 conformity with the applicable laws of this state and of  
35 the federal government.

35 The state board shall have the authority to enforce all  
36 of the laws of this state concerning the public health,  
37 and shall take care to protect the life and health of all  
38 of the inhabitants of the state, and to that end shall  
39 make or cause to be made sanitary investigations and in-  
40 quiries respecting the cause of disease, especially of  
41 epidemics and endemic conditions, and the means of pre-  
42 vention, suppression or control of such conditions; the  
43 source of mortality, and the effects of localities, employ-  
44 ment, habits and circumstances of life on the public  
45 health. It shall gather information in respect to the  
46 said and kindred subjects for diffusion among the people  
47 of the state. It shall inspect and examine food, drink  
48 and drugs offered for sale, or for public consumption, in  
49 such manner as it shall deem necessary to protect the  
50 public health, and shall report all violations of the laws  
51 of this state and the regulations adopted thereunder re-  
52 lating to pure food, drink and drugs to the prosecuting  
53 attorney of the county in which such violations occur,  
54 and lay before such prosecuting attorney the evidence in  
55 its knowledge of such violations. The board or its duly  
56 designated employees may make complaint or cause  
57 proceedings to be instituted against any person or per-  
58 sons, or corporation, for the violation of any of the health  
59 laws of this state. Such action may be taken by the

60 board without the sanction of the prosecuting attorney  
61 of the county in which proceedings are instituted, if said  
62 officer fail or refuse to discharge his duty. In no such  
63 case shall the board or any person acting under its di-  
64 rection be required to give security for costs.

65 The state board of health shall provide for the ef-  
66 ficient and accurate registration of births and deaths, and  
67 the recordation of cases of such diseases as may be re-  
68 quired to be recorded by statute or regulation. It shall  
69 have the power to inspect, and to make and enforce, for  
70 the protection of the public health, reasonable rules and  
71 regulations to control the sanitary condition of all insti-  
72 tutions and schools, whether public or private, public  
73 conveyances, dairies, creameries, slaughter houses, work  
74 shops, factories, labor camps, places of entertainment,  
75 hotels, tourist camps, all other places open to the general  
76 public and inviting public patronage or public assem-  
77 bly, or tendering to the public any item for human con-  
78 sumption, and places where offensive trades or industries  
79 are conducted. It shall have the power to make and en-  
80 force reasonable rules and regulations to control occu-  
81 pational and industrial health hazards, and to make in-  
82 spections and conduct hearings respecting the cause and  
83 control of such hazards. It shall have the power to in-  
84 spect and to make reasonable rules and regulations to  
85 control the sanitary condition of streams, sources of  
86 water supply, and sewerage facilities.

87 The state board is empowered and directed to en-  
88 courage and foster the cooperation of all physicians, vol-  
89 unteer health organizations and other interested persons  
90 and organizations in the improvement of public health,  
91 and to disseminate information to the general public in  
92 all matters pertaining to public health.

93 The state board shall promulgate and enforce regula-  
94 tions governing the design of all public water systems,  
95 plumbing systems, sewerage systems and sewage treat-  
96 ment plants, swimming pools and excreta disposal meth-  
97 ods in this state, whether publicly or privately owned;  
98 the operation of all public chlorination and filtration  
99 plants, and the qualifications of operators, chemists, bac-  
100 teriologists and superintendents of filtration, or others,

101 who are in actual charge of the plant operation of all  
102 public water systems, sewage treatment plants and swim-  
103 ming pools.

104 The state board shall have the power and authority to  
105 make and promulgate, and from time to time amend such  
106 rules and regulations as it may deem necessary and ad-  
107 visable to properly put into effect the public health laws  
108 of this state, and for the administration of the powers  
109 granted to it by this article.

110 Every general regulation adopted by the state board  
111 of health shall state the day on which it takes effect. A  
112 copy of any such regulation, duly signed by the director  
113 of health, shall be filed in the office of the secretary of  
114 state, and a copy thereof shall be sent by the director of  
115 health to each health officer within the state and shall be  
116 published in such manner as the board may determine:  
117 *Provided, however,* That nothing herein contained shall  
118 be construed to give the state department of health or  
119 the state board of health power to regulate or interfere  
120 with the drainage from any mine or manufacturing plant  
121 unless the drainage from said mine or manufacturing  
122 plant shall contain disease producing bacteria in suf-  
123 ficient numbers to endanger health, or organic or in-  
124 organic wastes of such nature as to cause the water in-  
125 tended for public or private water supplies to be unfit  
126 for use.

Sec. 4. *Board of Health; Organization, Reports, and*

2 *Offices.*—The state board of health shall adopt a seal. It  
3 shall organize by electing from among its members a  
4 chairman who shall serve as such for a period of two years.  
5 Such chairman shall have the power to sign documents,  
6 execute contracts and otherwise act for and in the name  
7 of the board in all matters within its lawful powers and  
8 duly authorized by a majority of its members.

9 The board shall determine the number, date and place  
10 of its regular meetings, but at least one such meeting shall  
11 be held annually at the board's established offices in the  
12 city of Charleston. Whenever the convenience of the pub-  
13 lic or of interested persons may be promoted, or delay or  
14 expense may be prevented, the board may, in its discre-



15 tion, hold meetings, hearings or proceedings at any other  
16 time or place designated by it.

17 The board shall report in writing to the governor on or  
18 before the thirty-first day of August of each year. The  
19 report shall contain a summary of the board's proceedings  
20 during the preceding fiscal year, a detailed and itemized  
21 statement of all revenue received and all expenditures  
22 made by or on behalf of the board, such other information  
23 as it may deem necessary or useful, and any additional  
24 information which may be requested by the governor.  
25 The fiscal year of the board and of the department of  
26 health shall conform to the fiscal year of the state.

27 An office shall be established and maintained by the  
28 board in the city of Charleston. In addition, the board  
29 may establish and maintain such other offices within the  
30 state as it may deem necessary and expedient.

Sec. 5. *Director of Health; Appointment, Qualifications,*  
2 *Compensation.*—A state director of health shall be ap-  
3 pointed by the state board of health, to serve for an in-  
4 definite term at the pleasure of the board. The director  
5 of health so appointed shall be a physician holding the  
6 degree of doctor of medicine, a graduate of a reputable  
7 medical college, and eligible for licensure as a physician  
8 in this state, and shall have had at least five years ex-  
9 perience in the practice of medicine. He shall be skilled  
10 in sanitary science and experienced in public health ad-  
11 ministration. He shall devote his entire time to the duties  
12 of his office as required and prescribed by this article, and  
13 shall not be actively engaged or employed in any other  
14 business, vocation or employment. He shall receive such  
15 compensation as the board may determine. He shall be  
16 reimbursed for all necessary traveling and other expenses  
17 incurred by him in the discharge of his official duties.

Sec. 6. *Director of Health; Duties and Powers.*—The  
2 director of health shall be the executive officer of the state  
3 board of health. Under its supervision, he shall admin-  
4 ister the provisions of this article, all other laws of this  
5 state relating to public health and within the authority of  
6 the department of health, and the rules, regulations and  
7 orders established, promulgated or issued by the board

8 of health. The director shall attend but not vote at all  
9 meetings of the state board of health. He shall act as  
10 secretary of the board and as such shall be in charge of its  
11 offices and responsible to the board for the preparation of  
12 reports and the collection and dissemination of data and  
13 other public information relating to public health. At  
14 the direction of the board of health, he shall, together with  
15 the chairman of the board, execute all contracts entered  
16 into by the board which are legally authorized. He shall  
17 be the administrative head and chief executive officer of  
18 the state department of health and as such shall organize  
19 and supervise all of the activities of the department of  
20 health.

*Sec. 7. Divisions of Department; Directors of Divisions.*

2 —There shall be included in the state department of  
3 health the following divisions:

- 4 Division of communicable diseases,
- 5 Division of cancer control,
- 6 Division of vital statistics,
- 7 Division of sanitary engineering,
- 8 Division of child hygiene,
- 9 Division of barbers and beauticians.

10 The state board of health shall appoint, with the advice  
11 of the director of health, a director for each division, and  
12 shall prescribe, with the advice of the director of health,  
13 the qualifications of each such division director, the duties  
14 pertaining to each division, and the arrangement of the  
15 subdivisions, if any, thereof.

16 The state board shall have authority to establish such  
17 additional administrative sections or groupings within the  
18 department of health as it may consider necessary or ad-  
19 visable for the efficient administration of its powers and  
20 duties.

*Sec. 8. Administrative and Other Employees of the De-*

2 *partment of Health.*—The state board of health may at  
3 such time or times as it may deem necessary, employ,  
4 with the advice of the director of health, such administra-  
5 tive employees, inspectors, examiners, or other persons  
6 as may be necessary to properly carry out the provisions  
7 of the public health laws of this state. Such inspectors,

8 examiners and other employees as may be duly designated  
9 by the board of health shall act as its representatives and,  
10 under the direction of the director of health, shall enforce  
11 the provisions of the public health laws and all duly  
12 promulgated rules and regulations of the board of health,  
13 and in the discharge of official duties, shall have the right  
14 of entry into any institution or school, whether public or  
15 private, public conveyance, dairy, creamery, slaughter  
16 house, work shop, factory, labor camp, place of entertain-  
17 ment, hotel, tourist camp, all other places open to the gen-  
18 eral public and inviting public patronage or public as-  
19 sembly, or tendering to the public any item for human  
20 consumption, and places where offensive trades or indus-  
21 tries are conducted.

22 Any person interfering with or attempting to interfere  
23 with any inspector, examiner or other duly authorized  
24 employee of the board of health in the discharge of his  
25 duties under this section shall be guilty of a misdemeanor  
26 and upon conviction shall be fined not less than ten dol-  
27 lars, nor more than one hundred dollars.

Sec. 9. *Supervision Over Local Sanitation.*—No county  
2 or municipal government, public or private institution,  
3 firm, corporation or company, person or persons, shall in-  
4 stall or establish any system or method of drainage, wa-  
5 ter supply, excreta disposal or system of garbage and ref-  
6 use disposal insofar as each affects the public health in this  
7 state unless the same is installed or established in ac-  
8 cordance with plans, specifications, and instructions issued  
9 by the state department of health or which have been  
10 approved in writing by the director of health or his au-  
11 thorized representative.

12 Whenever the director of health or his authorized rep-  
13 resentative finds upon investigation that any system or  
14 method of drainage, water supply, excreta disposal or gar-  
15 bage or refuse disposal, whether publicly or privately  
16 owned, is such as to endanger the public health or is cre-  
17 ating a nuisance that is detrimental to health, the director  
18 of health or his duly authorized representative shall be  
19 empowered to issue an order requiring the owner of such  
20 system or method to make such alterations, within a rea-

21 sonable time, as may be necessary to correct the improper  
22 condition.

23 The personnel of the state department of health shall  
24 be at the disposal of any county, municipality, firm, cor-  
25 poration, company, person or persons to consult and ad-  
26 vise with them as to the most appropriate design, method  
27 of operation or alteration of the systems or methods above  
28 mentioned.

29 Any county, municipality, public or private institution,  
30 firm, corporation, company, person or persons who shall  
31 violate any provisions of this section shall be deemed  
32 guilty of a misdemeanor and upon conviction thereof shall  
33 be punished by a fine of not less than ten dollars nor more  
34 than one hundred dollars.

Sec. 10. *Supervision of State Health Institutions.*—The  
2 state department of health shall have the advisory med-  
3 ical supervision of Denmar, Berkeley Springs, Pinecrest,  
4 Hopemont and all other state sanitariums for the treat-  
5 ment of tuberculosis or chronic diseases; Huntington,  
6 Spencer, Lakin, Weston and all other state hospitals for  
7 the treatment of mental or nervous diseases; and Fair-  
8 mont and Welch emergency hospitals; and the state board  
9 of control shall have the control of the business and fiscal  
10 affairs thereof.

11 The director of the bureau of tuberculosis of the state  
12 department of health, under the supervision of the state  
13 board of health, shall encourage measures for the sup-  
14 pression of tuberculosis, such as clinics, camps, open air  
15 schools, sanitariums, district nursing, anti-tuberculosis  
16 societies, diffusion of knowledge and other means.

17 The state board of health may promote mental health,  
18 by having mental hygiene clinics conducted, by utilizing  
19 the professional services available at the state mental  
20 hospitals, by cooperating with the state department of  
21 education and other school authorities in making the  
22 services of psychologists and psychiatrists available to  
23 schools, by conducting educational programs, and by any  
24 other means that it may deem necessary or advisable.

Sec. 11. *State Laboratory; Branches.*—The state board

2 of health may establish and maintain a state hygienic  
3 laboratory as an aid in performing the duties imposed  
4 upon the said board, or the department of health, by law,  
5 and may employ any chemists, bacteriologists, and other  
6 employees that may be necessary to properly operate such  
7 laboratory. The board of health may establish branches  
8 of the state laboratory at such points within the state as  
9 it may deem necessary in the interest of the public health.

Sec. 12. *Expenditures of State Department of Health.*—

2 The state department of health shall have power to ex-  
3 pend annually, for the purpose of performing the duties  
4 imposed on it, or authorized by law, such sum as may be  
5 appropriated by the Legislature for the department of  
6 health. The director of health shall audit all bills, which  
7 shall be made out in due form and verified by the members  
8 of the board of health, directors of divisions, employees,  
9 or agents rendering services or incurring traveling or  
10 other expenses in the performance of the duties of their  
11 offices or employments. Such bills, when approved by the  
12 auditor, shall be paid out of the state treasury.

Sec. 13. *Disposition of Moneys Received by State Direc-  
tor of Health; Report to Auditor.*—The state director of  
3 health, as secretary of the board of health, shall receive  
4 and account for all moneys required to be paid to the  
5 board of health as fees for permits, licenses, or registra-  
6 tions, pursuant to the provisions of this code, and shall  
7 pay such moneys into the state treasury monthly, on or  
8 before the tenth day of the month succeeding the month  
9 in which such moneys were received. The director of  
10 health shall, on the first day of January and the first day  
11 of July in each year, or within five days thereafter, certify  
12 to the state auditor a detailed statement of all such moneys  
13 received by him during the preceding six months. If the  
14 director of health shall fail or refuse to comply with the  
15 provisions of this section, he shall be guilty of a misde-  
16 meanor, and, upon conviction thereof, shall be fined for  
17 each offense not less than fifty dollars, nor more than two  
18 hundred dollars.

Sec. 14. *State Department of Health Authorized to Co-  
2 operate with Federal Government in Hospital Construc-*

3 *tion Program.*—The state board of health is hereby desig-  
4 nated as the sole state agency to cooperate with the fed-  
5 eral government in its hospital construction program; and  
6 is hereby authorized to make such an inventory of exist-  
7 ing public health centers and public and private hospitals,  
8 and the laboratory and other facilities thereof, and to  
9 adopt and supervise the administration of such a state  
10 wide plan for the construction of additional hospitals and  
11 public health centers as may be necessary to comply with  
12 the requirements and conditions of federal law in respect  
13 to the granting of federal aid for such purposes.

14 The governor shall have authority to appoint such an  
15 advisory council to consult with the state board of health  
16 as may be necessary under federal law to effectuate the  
17 purposes of this section. The members of any such ad-  
18 visory council shall serve without compensation, but shall  
19 be paid the amount of their traveling and other expenses  
20 necessarily incurred in the performance of their duties.

Sec. 15. *Federal Aid.*—The state board of health is au-  
2 thorized to accept, receive and receipt for federal moneys  
3 and other moneys, either public or private, for and in be-  
4 half of this state or any county or municipality thereof, for  
5 public health purposes, or for the establishment or con-  
6 struction of public health facilities, whether such work  
7 is to be done by the state, or by such county or municipal-  
8 ity, or jointly, aided by grants of aid from the United  
9 States, upon such terms and conditions as are, or may be,  
10 prescribed by the laws of the United States and any rules  
11 or regulations made thereunder. The state board is au-  
12 thorized to, and may, act as the agent of the state or any  
13 of its agencies, or of any county or municipality of this  
14 state, upon the request of any agency of the state or of  
15 any such county or municipality, in accepting, receiving  
16 and receipting for such moneys in its behalf, for public  
17 health facilities financed either in whole or in part by  
18 federal moneys.

19 The state, or any agency thereof, or any county or mu-  
20 nicipality is authorized to, and may designate the state  
21 board of health as its agent for the purposes above set  
22 forth, and any such agency, county or municipality may  
23 enter into an agreement with the board prescribing the

24 terms and conditions of such agency in accordance with  
25 federal laws, rules and regulations, and with the laws of  
26 this state. Such moneys as are paid over by the United  
27 States government shall be retained by the state or paid  
28 over to said counties or municipalities under such  
29 terms and conditions as may be imposed by the United  
30 States government in making such grants.

31 All moneys accepted for disbursement by the board  
32 pursuant to this section shall be deposited in the state  
33 treasury, and, unless otherwise prescribed by the au-  
34 thority from which the money is received, kept in separate  
35 funds, designated according to the purpose for which the  
36 moneys were made available, and held by the state in  
37 trust for such purposes. All such moneys are hereby ap-  
38 propriated for the purposes for which the same were made  
39 available and shall be expended in accordance with fed-  
40 eral laws and regulations and with the laws of this state.  
41 The board is authorized, whether acting for the state or  
42 one of its agencies, or as the agency for any county or mu-  
43 nicipality, when requested by the United States govern-  
44 ment or any agency or department thereof, or when re-  
45 quested by the state, a state agency, or any county or mu-  
46 nicipality for which the moneys has been made available,  
47 to disburse such moneys for the designated purposes, but  
48 this shall not preclude any other authorized method of  
49 disbursement.

Sec. 16. *Investigations, Hearings, Power to Subpoena  
2 Witnesses; Self Crimination.*—The state board of health,  
3 any member thereof, the director of health, or any of-  
4 ficer or employee of the department of health designated  
5 by the board of health, shall have the power to hold in-  
6 vestigations, inquiries and hearings concerning matters  
7 covered by the laws of this state pertaining to public  
8 health and within the authority of the state board of  
9 health, and the rules, regulations and orders of the board.  
10 Hearings shall be open to the public and shall be held  
11 upon such call or notice as the board shall deem ad-  
12 visable.

13 Each member of the board, the director and every of-  
14 ficer or employee of the department of health designated  
15 to hold any inquiry, investigation or hearing shall have

16 the power to administer oaths and affirmations, certify  
17 to all official acts, issue subpoenas and order the attend-  
18 ance and testimony of witnesses in the production of  
19 papers, books and documents. In case of the failure of  
20 any person to comply with any subpoena or order issued  
21 under the authority of this section, the board or its author-  
22 ized representative may invoke the aid of any circuit  
23 court of this state. The court may thereupon order such  
24 person to comply with the requirements of the subpoena  
25 order or to give evidence touching the matter in question.  
26 Failure to obey the order of the court may be punished  
27 by the court as a contempt thereof.

28 Subject to the foregoing provision the board may in its  
29 discretion make available to appropriate federal, state  
30 and municipal agencies information and material devel-  
31 oped in the course of its investigation and hearings: *Pro-*  
32 *vided, however,* That information obtained from studies  
33 or from any investigation made or hearing held pursuant  
34 to the provisions of this article shall not be admissible  
35 in evidence in any action at law to recover damages for  
36 personal injury or in any action under the workmen's  
37 compensation act, but such information, if available, shall  
38 be furnished upon request to the West Virginia compen-  
39 sation commissioner for the sole purpose of adjusting  
40 claims presented to the said commissioner.

Sec. 17. *State Board of Health, Orders, Notices and*  
2 *Opportunity for Hearing.*—Every order of the state board  
3 of health requiring performance of certain acts or com-  
4 pliance with certain requirements and any denial or  
5 revocation of an approval, certificate or license shall set  
6 forth the reasons and shall state the acts to be done or  
7 requirements to be met before approval by the board will  
8 be given or the approval, license, or certificate granted  
9 or restored or the order modified or changed. Orders is-  
10 sued by the board pursuant to the provisions of this  
11 article shall be served upon the persons affected either by  
12 registered mail or in the manner provided by chapter  
13 fifty-six, article two, section one of this code. In every  
14 case where notice and opportunity for hearing are re-  
15 quired under the provisions of this article, the order of



16 the board shall, on not less than ten days notice, specify  
17 the time when and place where the person affected may  
18 be heard, or the time within which he may request hear-  
19 ing, and such order shall become effective upon the ex-  
20 piration of the time for exercising such opportunity for  
21 hearing unless a hearing is held or requested within the  
22 time provided, in which case the order shall be sus-  
23 pended until the board shall affirm, disaffirm or modify  
24 such order after hearing held or default by the person  
25 affected.

Sec. 18. *Judicial Review of Action by State Board of Health.*—Any person aggrieved by any final order of the  
2 state board of health shall have the right to a judicial  
3 review of the action of the board upon certiorari by the  
4 circuit court of the county in which the cause of action  
5 arose. The granting of such review, upon certiorari, shall  
6 be within the sound discretion of the judge of the said  
7 circuit court. A petition for such review must be filed  
8 with the said court, or with the judge thereof in vacation,  
9 within a period of thirty days from the date of entry of  
10 the final order complained of.

12 An appeal from any final order entered by the said cir-  
13 cuit court upon granting such writ of certiorari may be  
14 had by application to the supreme court of appeals of  
15 West Virginia for a writ of error and supersedeas. Such  
16 application to the supreme court of appeals shall be made  
17 within thirty days of the entry of the order appealed  
18 from by the said circuit court: *Provided, however,* That  
19 when either the circuit court or the supreme court of  
20 appeals has taken jurisdiction of any such case, such  
21 court may, in its sound discretion, refuse a stay of execu-  
22 tion or supersedeas to the order or any portion of the  
23 order, of the board, during the time that the case is pend-  
24 ing before the said court, if the court is of the opinion  
25 that the order of the board or a part of such order is  
26 reasonable and has been issued for the protection of the  
27 public health.

Sec. 19. *Meaning of Words "Public Health Council"*  
2 *and "Commissioner of Health".* Wherever in this code  
3 the words "public health council" or "state public health

4 council" appear, they shall mean, and be construed as  
5 meaning the "West Virginia board of health".

6 Wherever in this code the words "commissioner of  
7 health", "health commissioner", or "state commissioner  
8 of health" appear, they shall mean, and be construed as  
9 meaning "state director of health".

Sec. 20. *Penalties for Violating Provisions of this*  
2 *Article.*—Any person violating any of the provisions of  
3 this article, for which the penalty is not otherwise pro-  
4 vided, or any of the rules, regulations or orders issued  
5 pursuant thereto, shall be punishable by a fine of not more  
6 than two hundred dollars or by imprisonment for not  
7 more than thirty days, or both.

Sec. 21. *Severability.*—If any provision of this article,  
2 or the application thereof to any person or circumstance,  
3 shall be held invalid, such invalidity shall not affect the  
4 provisions or applications of this article which can be  
5 given effect without the invalid provisions or applica-  
6 tion, and to this end the provisions of this article are  
7 declared to be severable.

## Article 2. Local Health Officers.

### Section

3. Counties, or counties and municipalities, may combine in employ-  
ment of officers and installation and maintenance of equipment.
4. State board of health may supplant local health authority; re-  
moval of delinquent local officer.

Sec. 3. *Counties, or Counties and Municipalities, May*  
2 *Combine in Employment of Officers and Installation and*  
3 *Maintenance of Equipment.*—Any two or more counties,  
4 or any county or counties and any one or more munici-  
5 palities within the said county or counties, may combine  
6 to cooperate with the state department of health, by vote  
7 of the county court in the case of a county and by vote of  
8 the council or other governing body in the case of a  
9 municipality, and may participate in the employment of  
10 trained health officers and other agents or in the installa-  
11 tion and maintenance of a common laboratory and other  
12 equipment. Whenever any such units shall decide so to  
13 cooperate and shall appropriate a sum or sums of money  
14 for such joint or cooperative action, a sum equal to two-

15 fifths of the total amount contributed by the cooperating  
16 units, shall be added thereto from the appropriation made  
17 for the state department of health: *Provided*, That the  
18 general plan of cooperation, as well as the principal  
19 health officer, executive agent or laboratory director em-  
20 ployed by the cooperating units, shall first have been  
21 approved by the state board of health.

22 Each county or municipality participating in any such  
23 cooperative action shall annually select and appoint by  
24 vote of the county court in the case of a county, and by  
25 vote of the council or other governing body in the case  
26 of a municipality, not less than one nor more than three  
27 persons to be members of a combined board of health. No  
28 such person shall be selected by, nor represent on any  
29 such combined board, more than one such county or  
30 municipality. The number of persons to be selected by  
31 each participating county or municipality as members of  
32 such board, subject to the limitation contained in the two  
33 preceding sentences, shall be agreed upon by the several  
34 counties or municipalities participating. Any such com-  
35 bined board of health shall consist of the several members  
36 so selected. Such board shall organize by electing a  
37 chairman from among its members. It shall have the  
38 power to adopt, and from time to time amend, such rules  
39 and regulations as it may deem necessary concerning the  
40 time and place of its meetings, the procedure and method  
41 of conducting its meetings or business, and any other  
42 matters affecting, or necessary to, the orderly and ef-  
43 ficient discharge of its duties or exercise of its powers.  
44 All powers and duties belonging to or vested in county  
45 boards of health or municipal boards of health are hereby  
46 vested in, conferred upon, and declared to be, the powers  
47 and duties of, any combined board of health created pur-  
48 suant to the provisions of this section. The territorial  
49 jurisdiction of any such combined board of health shall  
50 be coextensive with the boundaries of all of the counties  
51 and municipalities which have been combined to co-  
52 operate as herein provided.

53 Upon the formation of a combined local board of health  
54 as herein provided, and during the period that it continues  
55 to exist, there shall be no separate county board of health

56 or municipal board of health in any county or municipal-  
57 ity represented on the combined board of health.

Sec. 4. *State Board of Health May Supplant Local Health Authority; Removal of Delinquent Local Officer.*—  
2 When, in the opinion of the state board of health, any  
3 local health authority shall fail or refuse to enforce  
4 necessary laws and regulations to prevent and control  
5 the spread of communicable or infectious disease de-  
6 clared to be dangerous to the public health, or when, in  
7 the opinion of the said state board, a public health emer-  
8 gency exists, the state board may enforce its rules and  
9 regulations within the territorial jurisdiction of such local  
10 health authorities, and for that purpose shall have and  
11 may exercise all the powers given by law to local health  
12 authorities. All expenses so incurred shall be a charge  
13 against the counties, cities, or towns concerned. And in  
14 such cases the failure or refusal of any local health of-  
15 ficer or local health body to carry out the lawful orders  
16 and regulations of the state board of health shall be suf-  
17 ficient cause for the removal of such local health officer  
18 or local health body from office, and upon such removal  
19 the proper county or municipal authorities shall at once  
20 nominate a successor, other than the person removed, as  
21 provided by law.  
22

### Article 3. Prevention and Control of Communicable and In- fectious Diseases.

#### Section

1. State board of health may establish quarantine and control epi-  
demics.
2. Powers of county and municipal boards of health to establish  
quarantine; penalty for violation.
5. Free serum or vaccine preventives of disease.
6. Nuisances affecting public health.
12. Same; duties of state board of health.

Section 1. *State Board of Health May Establish Quar-  
antine and Control Epidemics.*—The state board of health  
2 is empowered to establish and strictly maintain quaran-  
3 tine at such places as it may deem proper, and forbid and  
4 prevent the assembling of the people in any place, when  
5 the said board or the state director of health or any  
6 county or municipal health officer deems that the public  
7 health and safety so demand, and may adopt rules and  
8

9 regulations to obstruct and prevent the introduction or  
10 spread of smallpox or other communicable or infectious  
11 diseases into or within the state, and shall have the  
12 power to enforce these regulations by detention and ar-  
13 rest, if necessary. It shall have power to enter into any  
14 town, city, factory, railroad train, steamboat or other  
15 place whatsoever, and enter upon and inspect private  
16 property for the purpose of investigating the sanitary  
17 and hygienic conditions and the presence of cases of  
18 infectious diseases, and may, at its discretion, take charge  
19 of any epidemic or endemic conditions, and enforce such  
20 regulations as it may prescribe. All expenses incurred  
21 in controlling any endemic or epidemic conditions shall  
22 be paid by the county or municipality in which such  
23 epidemic occurs.

Sec. 2. *Powers of County and Municipal Boards of  
2 Health to Establish Quarantine; Penalty for Violation.*—  
3 The county board of health of any county may declare  
4 quarantine therein, or in any particular district or place  
5 therein, whenever in their judgment it is necessary to  
6 prevent the spread of any communicable or infectious  
7 disease prevalent therein, or to prevent the introduction  
8 of any communicable or infectious disease prevailing in  
9 any other state, county or place, and of any and all per-  
10 sons and things likely to spread such infection. As soon  
11 as such quarantine is established such board shall, in  
12 writing, inform the state board of health thereof, the  
13 duty of which it shall be to ascertain, as soon as prac-  
14 ticable, the necessity therefor, if any exists, and if the  
15 said state board, or the state director of health, acting  
16 for the said state board, finds that no such necessity  
17 exists, the same shall, by the said state board, be declared  
18 raised. The said county board of health shall have power  
19 and authority to enforce such quarantine until the same  
20 is raised as aforesaid, or by themselves, and may con-  
21 fine any such infected person, or any person liable to  
22 spread such infection, to the house or premises in which  
23 he resides, or if he has no residence in the county, at a  
24 place to be provided by them for the purpose; and if it  
25 shall become necessary to do so, they shall summon

26 sufficient guard for the enforcement of their orders in the  
27 premises. Every person who shall fail or refuse to com-  
28 ply with any order made by such board under this  
29 section, and every person summoned as such guard who  
30 shall, without a lawful excuse, fail or refuse to obey the  
31 orders and directions of such board in enforcing said  
32 quarantine, shall be guilty of a misdemeanor, and for  
33 such offense shall be fined not less than twenty-five nor  
34 more than two hundred dollars. In cases of emergency  
35 or actual necessity, and when the court or corporate  
36 authorities are from any cause unable to meet or to  
37 provide for the emergency or the necessity of the case,  
38 all actual expenditures necessary for local and county  
39 quarantine, as provided for in this section, shall be cer-  
40 tified by the county board of health to the county court,  
41 and the whole, or as much thereof as the said court  
42 may deem right and proper, shall be paid out of the county  
43 treasury. The board of health of any city, town or vil-  
44 lage shall have, within the municipality, the same powers  
45 and perform the same duties herein conferred upon and  
46 required of the county board of health in their county.  
47 So far as applicable the provisions of this section shall  
48 apply to any quarantine established and maintained by  
49 the state board of health pursuant to section one of this  
50 article.

Sec. 5. *Free Serum or Vaccine Preventives of Disease.*

2 —The state board of health shall purchase vaccine lymph,  
3 diphtheria antitoxin, tetanus antitoxin and such other  
4 forms of serum or vaccine preventives of disease as it may  
5 deem necessary, and shall distribute the same, free of  
6 charge, in such quantities as it may deem necessary, to  
7 county and municipal health officers, to be used by them  
8 for the benefit of, and without expense to the indigent  
9 within their respective jurisdictions, and in other  
10 cases where it may be urgently necessary to check con-  
11 tagions and control epidemics.  
12 The state board of health shall also deliver, free of  
13 charge, to such drug stores or other stores within each  
14 county as the health officer of such county may designate  
15 as proper depositories, such quantities of diphtheria anti-

16 toxin as said board may deem necessary for the use of the  
17 indigent of such county, and such antitoxin shall be  
18 kept at said drug stores or other stores at all times and in  
19 sufficient quantities to permit immediate delivery to any  
20 licensed physician who may require the same for the  
21 treatment of any indigent person infected with diphtheria,  
22 or to prevent such infection, without cost to the patient  
23 so treated. The state board of health shall take a receipt  
24 from the proprietor of each drug store or other store for  
25 any antitoxin delivered as herein provided.

26 The auditor of the state shall pay the actual cost of all  
27 said serum and vaccine preventives and the cost of deliv-  
28 ering said diphtheria antitoxin to any drug store or other  
29 store, upon the presentation of the original invoices  
30 thereof, duly verified by affidavit and approved by the  
31 state director of health, and shall in addition pay to said  
32 drug stores or other stores, for delivery of said diphtheria  
33 antitoxin to the physicians aforesaid, a commission of ten  
34 percent of the original cost of said antitoxin so delivered.

Sec. 6. *Nuisances Affecting Public Health.*—The state  
2 board of health, the state director of health or any county  
3 or municipal health officer shall inquire into and investi-  
4 gate all nuisances affecting the public health within its or  
5 his jurisdiction; and the said board or any such officer or  
6 the county court of any county or any municipality is au-  
7 thorized and empowered to apply to the circuit court of  
8 the county in which any such nuisance exists, or to the  
9 judge thereof in vacation, for an injunction forthwith to  
10 restrain, prevent or abate such nuisance.

Sec. 12. *Same; Duties of State Board of Health.*—It  
2 shall be the duty of the state board of health:

3 (a) To enforce the provisions of sections seven to thir-  
4 teen, inclusive, of this article.

5 (b) To promulgate such rules and regulations as shall  
6 be necessary for the purpose of enforcing said provisions,  
7 and as the state board of health may deem necessary for  
8 the further and proper guidance of local health officers;

9 (c) To provide for the gratuitous distribution of one  
10 per cent solution of silver nitrate outfits, together with  
11 proper directions for the use and administration thereof,

12 to all physicians and midwives who may be engaged in the  
13 practice of obstetrics, or assisting at childbirth;

14 (d) To publish and promulgate such further advice  
15 and information concerning the dangers of inflammation  
16 of the eyes of the new-born as is necessary for prompt and  
17 effective treatment;

18 (e) To furnish copies of sections seven to thirteen,  
19 inclusive, of this article to all physicians and midwives  
20 who may be engaged in the practice of obstetrics, or as-  
21 sisting at childbirth;

22 (f) To keep a proper record of any and all cases of in-  
23 flammation of the eyes of the new-born of which reports  
24 are filed with the state board of health pursuant to law,  
25 or which may come to their attention in any way, and to  
26 constitute such records a part of the annual report to the  
27 governor;

28 (g) To report any and all violations of the public  
29 health laws or of any rules or regulations lawfully adopted  
30 pursuant thereto that may come to their attention, to the  
31 prosecuting attorney of the county wherein said viola-  
32 tions may have occurred, and to assist said official in any  
33 way possible in the prosecution of such cases.

## Article 5. Vital Statistics.

### Section

2. Division of vital statistics; supervision by state board of health;  
state registrar of vital statistics; appointment.  
17. Local registrars; duties.

Section 2. *Division of Vital Statistics; Supervision by*  
2 *State Board of Health; State Registrar of Vital Statistics;*  
3 *Appointment.*—The state board of health shall have gen-  
4 eral supervision over the division of vital statistics, which  
5 shall be under the immediate direction of the state reg-  
6 istrar of vital statistics, who shall be appointed by the  
7 state board of health, with the advice of the state director  
8 of health, and who shall be a competent vital statistician.  
9 The board shall provide for such clerical and other as-  
10 sistants in the division of vital statistics as may be neces-  
11 sary for the purposes of this article. The custodian of the  
12 capitol shall provide for the division of vital statistics  
13 suitable offices in the state capitol at Charleston, which  
14 shall be properly equipped with fireproof vault and filing



15 cases for the permanent and safe preservation of all of-  
16 ficial records made under and returned under this article.

Sec. 17. *Local Registrars; Duties.*—Each local registrar  
2 shall supply blank forms of certificates to such persons as  
3 require them. Each local registrar shall carefully exam-  
4 ine each certificate of birth or death when presented for  
5 record, in order to ascertain whether or not it has been  
6 made in accordance with the provisions of this article and  
7 the instructions of the state registrar; and if any certifi-  
8 cate of death is incomplete or unsatisfactory, it shall be his  
9 duty to call attention to the defects in the return, and to  
10 withhold the burial or removal permit until such defects  
11 are corrected. All certificates, either of birth or of death,  
12 shall be written legibly, in durable black ink or with a  
13 typewriter, and no certificate shall be held to be complete  
14 and correct that does not supply all of the items of infor-  
15 mation called for therein, or satisfactorily account for  
16 their omission. If the certificate of death is properly exe-  
17 cuted and complete, he shall then issue a burial or removal  
18 permit to the undertaker: *Provided*, That in case the death  
19 occurred from some disease which is held by the state  
20 board of health to be infectious or communicable and  
21 dangerous to the public health, no permit for the removal  
22 or other disposition of the body shall be issued by the reg-  
23 istrar, except under such conditions as may be prescribed  
24 by the state board of health. If a certificate of birth is in-  
25 complete, the local registrar shall immediately notify the  
26 informant, and require him to supply the missing items of  
27 information, if they can be obtained. He shall number,  
28 consecutively, the certificates of birth and death, in two  
29 separate series, beginning with number one (1) for the  
30 first birth and the first death in each calendar year, and  
31 sign his name as registrar in attest of the date of filing in  
32 his office. He shall also make a complete and accurate  
33 copy of each birth and each death certificate registered by  
34 him, and shall, on or before the tenth day of each month,  
35 transmit to the state registrar all original certificates reg-  
36 istered by him for the preceding month and the copies of  
37 such certificate made as herein provided. If no births or  
38 no deaths occurred in any month, he shall, on the tenth

39 day of the following month, report that fact to the state  
40 registrar, on a card provided for such purpose.

### Article 5-a. Cancer Control.

#### Section

##### 1. Division of cancer control.

Section 1. *Division of Cancer Control.*—There is hereby  
2 created a division of cancer control in the state depart-  
3 ment of health. The division, under the supervision of  
4 the state board of health, shall execute and administer  
5 the provisions of this article relating to the diagnosis,  
6 treatment and care of persons suffering from cancer. The  
7 division shall have authority to direct, control, govern and  
8 provide for the management of any state institution for  
9 the care and treatment of cancer patients which may here-  
10 after be created by law.

11 The head of the division shall be appointed in the same  
12 manner as the heads of other divisions in the department.  
13 He must meet the requirements and possess the qualifica-  
14 tions fixed by the merit system council in consultation  
15 with the state board of health. The said board may also  
16 appoint such assistants and employees in the division of  
17 cancer control as may be necessary for the proper admin-  
18 istration of the provisions of this article, such appoint-  
19 ments also to be made in accordance with the rules and  
20 regulations of the merit council.

### Article 5-b. Hospitals and Similar Institutions.

#### Section

##### 9. Appointment and term of office of advisory board members.

Section 9. *Appointment and Term of Office of Advisory*  
2 *Board Members.*—There shall be an advisory board of  
3 seven members, all of whom shall be citizens of West Vir-  
4 ginia, to assist in the establishment of rules, regulations  
5 and standards necessary to carry out the provisions of this  
6 article and to serve as consultants to the state board of  
7 health. The advisory board shall meet at least twice each  
8 year and at the call of the state board of health. The  
9 members of the advisory board shall annually elect one  
10 of its members to serve as chairman.

11 The advisory board shall be appointed by the governor  
12 by and with the consent of the senate. Of the seven mem-

bers of the board, four shall be persons who are well-versed in hospital organization and administration, and the remaining three shall be chosen from persons of recognized ability in the fields of medicine and surgery, nursing, welfare, public health, architecture, or allied professions in the field of health, or consumers of hospital services.

The members shall be appointed for seven year terms except that in the original appointments one person shall be appointed for one year, one person for two years, one person for three years, one person for four years, one person for five years, one person for six years, and one person for seven years. Thereafter each member shall be appointed to serve seven years or until his successor is appointed. In the case of a vacancy the appointee shall serve the remainder of the unexpired term.

Members of the advisory board shall be eligible to succeed themselves. Members of the advisory board shall serve without compensation but shall be entitled to reimbursement for actual expenses incurred in the performance of the duties of their office.

## **Article 7. Pure Food and Drugs.**

### **Section**

#### **3. Inspection and analysis of food and drugs.**

*Section 3. Inspection and Analysis of Food and Drugs.—*  
Whenever the state board of health, the West Virginia board of pharmacy, or any county or municipal health officer has reason to believe that any food or drug manufactured for sale, offered for sale, or sold, within this state, is adulterated, such board of health or board of pharmacy, by its authorized agent, or such county or municipal health officer, shall have the power, and it shall be his duty, to enter, during the usual hours of business, into any creamery, factory, store, sales room, drug store, laboratory, or other place where he has reason to believe such food or drug is manufactured, prepared, sold, or offered for sale, within the county or municipality, as the same may be, and to open any case, tub, jar, bottle or package containing, or supposed to contain, any such food or drug, and take a specimen thereof for examination and analysis. If less than a whole package is taken,

18 the specimen shall be sealed and properly prepared for  
19 shipment to the person who shall make the analysis  
20 hereinafter provided for. No whole or less than a whole  
21 package taken and prepared for shipment shall be opened  
22 before it has been received by the analyst aforesaid.

23 It shall be the duty of a qualified chemist of the state  
24 health department to test and analyze any such speci-  
25 men, to record the result of his analysis among the records  
26 of the department, and to certify such findings to the state  
27 board of health, the West Virginia board of pharmacy, or  
28 to the county or municipal health officers, as the case may  
29 be. If the analysis indicates that the said food or drug  
30 is adulterated, a certificate of such result sworn to by the  
31 person making the analysis, who shall also state in his  
32 certificate the reasonable cost and expense of such ana-  
33 lysis, shall be *prima facie* evidence of such adulteration in  
34 any prosecution under this article.

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## CHAPTER 102

(House Bill No. 49—By Mr. Doring)

AN ACT to amend and reenact section eighteen, article five,  
chapter sixteen of the code of West Virginia, one thousand  
nine hundred thirty-one, relating to compensation of reg-  
istrars of vital statistics.

[Passed February 21, 1949: in effect July 1, 1949. Approved by the Governor.]

### Article 5. Vital Statistics.

#### Section

18. Compensation of local registrars.

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

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

Section 18. *Compensation of Local Registrars.*—Each  
2 local registrar shall be paid the sum of fifty cents for  
3 each birth certificate and each death certificate properly

4 and completely made out and registered with him, and  
5 correctly recorded and promptly returned by him to the  
6 state registrar, as required by this article. And in case  
7 no births or no deaths were registered during any month,  
8 the local registrar shall be entitled to be paid the sum of  
9 fifty cents for each report to that effect, but only if such  
10 reports be made promptly as required by this article. The  
11 state registrar shall annually certify to the county courts  
12 of the several counties the number of births and deaths  
13 properly registered, with the names of the local registrars  
14 and the amounts due each at the rates fixed herein. All  
15 amounts payable to a local registrar under the provisions  
16 of this section shall be paid by the treasurer of the county  
17 in which the registration district is located, upon the  
18 order of the county court of such county issued upon  
19 such certification by the state registrar.

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## CHAPTER 103

(Senate Bill No. 237—By Mr. Love)

AN ACT to authorize and empower the bureau of dental health in the state department of health to establish a mobile dental health clinic, to be financed by federal funds.

[Passed March 5, 1949; in effect from passage. Approved by the Governor.]

### State Department of Health.

#### Section

1. Bureau of dental health authorized to establish mobile dental health clinic.

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

Section 1. *Bureau of Dental Health Authorized to Establish Mobile Dental Health Clinic.*—The bureau of dental health in the state department of health is hereby authorized and empowered to establish a mobile dental health clinic, which clinic shall be financed solely from funds available to the bureau of dental health from the children's bureau of the United States Department of Labor and the United States Public Health Service.

## CHAPTER 104

(House Bill No. 351—By Mr. Knight)

AN ACT to amend chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated two-a, relating to self-liquidating revenue bond issues by county courts, municipal corporations and county boards of education; to authorize county courts, municipal corporations and county boards of education to establish, construct, acquire, extend, equip, and improve athletic fields, stadiums, field houses, gymnasiums and other types of athletic establishments; and to defray the cost of such establishment, construction, acquisition, extension, equipment, and improvements by issuing revenue bonds, secured by and payable from the revenues from such establishments; and to authorize charges for the use of such establishments.

[Passed March 12, 1949; in effect from passage. Approved by the Governor.]

### Article 2-a. Establishment, Construction, Improvement, Etc., of Athletic Fields, Stadiums, Field Houses, Gymnasiums, and Other Athletic Establishments.

#### Section

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23. Protection and enforcement of rights of bondholders; receivership, including lessee.
24. Article confers additional powers.
25. Construction of powers conferred.
26. Article liberally construed.

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

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

Section 1. *Definitions.*—(a) The term “board” as used  
2 in this article shall mean any county court, municipal  
3 corporation or county board of education in the state of  
4 West Virginia; (b) the term “athletic establishment” shall  
5 be construed to mean and include athletic fields of all  
6 types, stadiums, gymnasiums, field houses, and all other  
7 types of athletic establishments capable of producing  
8 revenue, where the cost of such acquisition, construction,  
9 extension, equipment or improvements, together with  
10 reasonable interest thereon, will be returned within a  
11 reasonable period, not exceeding thirty years, by means  
12 of charges, rentals, radio broadcasting franchise fees, and  
13 other tolls, fees and charges other than taxation; and shall  
14 mean and include such athletic establishment in its en-  
15 tirety, and all integral parts thereof.

Sec. 2. *Boards Authorized to Construct Athletic Estab-*  
2 *lishments; Bonds to Pay Costs.*—Every county court,  
3 municipal corporation or county board of education in the  
4 state of West Virginia is hereby authorized and empow-  
5 ered to establish, construct, acquire, extend, equip and  
6 own, maintain and operate any of the athletic establish-  
7 ments described in section one of this article, together  
8 with all appurtenances necessary, useful or convenient  
9 for the maintenance and operation of such athletic es-  
10 tablishments, and shall have authority to acquire by gift,

11 grant, purchase, condemnation or otherwise, all necessary  
12 lands, rights of way and property therefor, and to issue  
13 revenue bonds to pay the costs of such athletic establish-  
14 ments and property. No obligation shall be incurred by  
15 the board in such establishment, construction, acquisition,  
16 extension or improvement, except such as is payable solely  
17 from the funds provided under the authority of this  
18 article.

Sec. 2-a. *Joint Establishment and Administration by*  
2 *Two or More Governmental Divisions.*—Any county court,  
3 municipal corporation and board of education, or any  
4 two of them, may jointly establish and conduct such ath-  
5 letic establishment and may exercise all the powers given  
6 by this article. In the event of any such joint establish-  
7 ment and operation, they may provide by agreement  
8 among themselves for all matters connected with such  
9 establishment and operation.

Sec. 3. *Construction, et Cetera, to Be Under Control of*  
2 *Board or Committee Appointed by Board.*—The construc-  
3 tion, acquisition, improvement, extension, equipment,  
4 custody, operation and maintenance of any such athletic  
5 establishment, and the collection of revenues therefrom,  
6 shall be under the supervision and control of the county  
7 court, municipal corporation or county board of educa-  
8 tion, or all or any part of such powers, duties and re-  
9 sponsibilities may be placed in a committee appointed  
10 by such board by resolution duly adopted. The term  
11 "board" when hereafter used in this article shall be  
12 construed to mean the county court, municipal corpora-  
13 tion or the county board of education or such duly ap-  
14 pointed committee, as the case may be.

Sec. 4. *Powers of Board.*—The board shall have power  
2 to take all steps and proceedings, and to make and enter  
3 into all contracts or agreements necessary or incidental  
4 to the performance of its duties and the execution of its  
5 powers under this article: *Provided*, That any contract  
6 relating to the financing or the acquisition, construction,  
7 extension or improvement of any such works, or any trust  
8 indenture as hereafter provided for, shall be approved



9 by the county court, municipal corporation or county  
10 board of education.

11 The board may employ engineers, architects, inspectors,  
12 superintendents, managers, collectors, attorneys and such  
13 other employees as in its judgment may be necessary  
14 in the execution of its powers and duties, and may fix  
15 their compensation, all of whom shall do such work as  
16 the board may direct. No contract or agreement with  
17 any contractor or contractors for labor or material ex-  
18 ceeding in amount the sum of one thousand dollars shall  
19 be made without advertising for bidders, which bids shall  
20 be publicly opened and award made to the lowest respon-  
21 sible bidder, with power in the board to reject any and  
22 all bids. After the acquisition, construction, equipment  
23 and completion of the athletic establishment the board  
24 shall operate, manage and control the same, and may  
25 order and complete any extensions, and improvements  
26 of and to the athletic establishments that the board may  
27 deem expedient if funds therefor be available, and shall  
28 establish rules and regulations for the use and operation  
29 of the athletic establishment, and do all things necessary  
30 or expedient for the successful operation thereof.

Sec. 5. *Preliminary Expenses.*—All necessary prelimin-  
2 ary expenses actually incurred by the board in the mak-  
3 ing of surveys, estimates of costs and of revenues, employ-  
4 ment of engineers or other employees, the giving of no-  
5 tices, taking of options, and all other expenses of what-  
6 soever nature necessary to be paid prior to the issue, sale  
7 and delivery of the revenue bonds herein provided for,  
8 may be paid by the board to be reimbursed and repaid  
9 out of the proceeds of sale of such revenue bonds in this  
10 article provided for.

Sec. 6. *Resolution for Construction, et cetera, of Estab-*  
2 *lishment.*—Before any board shall construct, acquire, im-  
3 prove, extend or equip any athletic establishment under  
4 this article, the board shall adopt a resolution which  
5 shall (a) set forth a brief general description of the  
6 athletic establishment, and if the same is to be con-  
7 structed a reference to the preliminary report or plans  
8 and specifications which shall theretofore have been pre-

9   pared; (b) set forth the estimated cost thereof; (c) order  
10 the construction, acquisition, extension, improvement or  
11 equipment of such establishment; (d) direct that revenue  
12 bonds of the board be issued pursuant to this article; in  
13 such amount as may be found necessary to pay the costs  
14 of such athletic establishment; and (e) contain such other  
15 provisions as may be necessary or proper in the premises.  
16 Before such resolution shall become effective it shall be  
17 published once each week for two successive weeks in two  
18 newspapers of opposite politics published in the county  
19 in which such board is located, or in one newspaper, if  
20 only one political faith is represented by newspapers pub-  
21 lished in such county, or if there be no newspaper so  
22 published, then such resolution shall be posted in at least  
23 three public places therein. Said notice shall specify a  
24 time and place for a public hearing, the time being  
25 not less than ten days after the first publication or post-  
26 ing of said notice; at which time and place all parties  
27 and interests may appear before the board, and may  
28 be heard as to whether or not said resolution shall  
29 be put into effect. At such hearing all objections and  
30 suggestions shall be heard and the board shall take such  
31 action as it shall deem proper in the premises: *Provided,*  
32 *however,* That if at such hearing a written protest is filed  
33 by thirty per cent or more of the owners of real estate  
34 situate in said county, then the board shall not take  
35 further action unless four-fifths of the members of said  
36 board assent thereto: *And provided further,* That in case  
37 written protest is filed purporting to have been signed  
38 by or on behalf of thirty per cent or more of the owners  
39 of real estate in said county, the board shall have  
40 authority to appoint a sub-committee to consist of one  
41 proponent, one opponent and the third to be selected by  
42 these two, to determine whether or not thirty per cent of  
43 the property owners have in fact protested, and said sub-  
44 committee shall report its findings to the board.

Sec. 7. *Eminent Domain.*—Every such board shall have  
2 power to condemn any land or easements, necessary or  
3 convenient for the construction of any such athletic  
4 establishment, or extensions, improvements or additions

5 thereto, and in connection therewith shall have and may  
6 exercise all the rights, powers and privileges of eminent  
7 domain granted to county courts, municipal corporations  
8 or county boards of education under the laws relating  
9 thereto. Title to property shall be taken in the name of  
10 the county court, municipal corporation or county board  
11 of education. Proceedings for such appropriation of prop-  
12 erty shall be under and pursuant to the general provisions  
13 of law relating to condemnation proceedings in the  
14 exercise of eminent domain: *Provided*, That the board  
15 shall be under no obligation to accept and pay for any  
16 property condemned, and shall in no event pay for prop-  
17 erty condemned or purchased, except from funds pro-  
18 vided pursuant to this article; and in any proceedings to  
19 condemn, such orders may be made as may be just to  
20 the board and the owners of the property to be con-  
21 demned; and an understanding or other security may be  
22 required securing such owners against any loss or damage  
23 which may be sustained by reason of the failure of the  
24 board to accept and pay for the property, but such under-  
25 taking or security shall impose no liability upon the board,  
26 except such as may be paid from the funds provided  
27 under the authority of this article.

28 In the event of acquisition by purchase, the board  
29 may obtain and exercise an option from the owners of  
30 said property for the purchase thereof, and may enter  
31 into a contract for the purchase thereof, and such pur-  
32 chase may be made upon such terms and conditions,  
33 and in such manner as the board may deem proper:  
34 *Provided, however*, That such exercise of option, pur-  
35 chase or contract for such purchase shall in no event  
36 bind or obligate said board, or create any debt, liability  
37 or claim, except such as may be paid from the funds  
38 provided under the authority of this article.

39 In the event of the acquisition of any athletic estab-  
40 lishment already constructed by purchase or condem-  
41 nation, the board at or before the time of the adoption  
42 of the resolution described in section six hereof, shall  
43 cause to be determined what repairs, replacements, ad-  
44 ditions and improvements will be necessary, in order  
45 that said establishment may be effective for its purpose,

46 and an estimate of the cost of such improvements shall  
47 be included in the estimate of the costs required by  
48 section six hereof, and such improvements shall be made  
49 upon the acquisition of the establishment and as a part  
50 of the cost thereof: *Provided, however,* That no board  
51 shall, under the authority conferred by this act, con-  
52 demn any existing privately owned athletic establish-  
53 ment in operation at the date of the condemnation.

Sec. 8. *Bonds for Improvements and Extension of Exist-*  
2 *ing Athletic Establishments.*—Whenever any board now  
3 or hereafter, shall own and operate any athletic estab-  
4 lishment as herein defined, whether acquired or construct-  
5 ed under the provisions of this article or not, and shall  
6 desire to construct improvements, enlargements and ex-  
7 tensions thereto, or acquire or construct better equip-  
8 ment for the same, it may issue revenue bonds under  
9 the provisions of this article to pay for the same, and  
10 the procedure therefor shall be the same as in this article  
11 provided for the issuance of bonds for acquisition or con-  
12 struction of such athletic establishment: *Provided, how-*  
13 *ever,* That no existing obligations or rights shall be affect-  
14 ed or impaired thereby.

Sec. 9. *Items of Expense Included in Cost of Athletic*  
2 *Establishment.*—The cost of the athletic establishment  
3 shall be deemed to include the cost of the acquisition  
4 or construction and equipment thereof, the cost of all  
5 property and easements deemed necessary or convenient  
6 therefor; interest upon bonds prior to and during con-  
7 struction or acquisition and for six months after com-  
8 pletion of construction or acquisition; engineering and  
9 legal expense; expense for estimates of cost and of rev-  
10 enues; expense for plans, specifications and surveys; other  
11 expenses necessary or incident to determining the fea-  
12 sibility or practicability of the enterprise; administrative  
13 expense; and such other expenses as may be necessary  
14 or incident to the financing herein authorized and the  
15 construction or acquisition of the establishment and plac-  
16 ing the same in operation, and the performance of the

17 things herein required or permitted in connection with  
18 any thereof.

Sec. 10. *Bonds to be Payable from Revenues Only; Exemption from Taxation.*—Funds for the payment of  
2 all or such part of the costs of such athletic establishment  
3 as may be determined by the board, shall be provided  
4 by the issuance of revenue bonds of such board. Such  
5 bonds shall be payable solely from the special fund here-  
6 in provided for such payment; and such bonds shall not  
7 in any respect be a corporate indebtedness of the county  
8 court, municipal corporation or county board of education  
9 issuing the same. All such bonds shall be exempt from  
10 taxation by the state of West Virginia or any county or  
11 municipality therein. All of the details of such bonds and  
12 the issuance thereof shall be determined by resolution  
13 of the board.

Sec. 11. *Interest Rate and Life of Bonds; Redemption; How Payable, Form, Denominations; Additional Bonds Authorized; Interim Certificates.*—Such revenue bonds  
2 shall bear interest at not more than six per cent per  
3 annum, payable annually or at shorter intervals, and  
4 shall mature at such time or times not exceeding thirty  
5 years from the date thereof, as may be determined by  
6 resolution of the board. Such bonds may be made re-  
7 deemable before maturity, at the option of the board,  
8 at not more than the par value thereof plus five per cent,  
9 under such terms and conditions as may be fixed by the  
10 resolution authorizing the issuance of the bonds. The  
11 principal and interest of the bonds may be made pay-  
12 able in any lawful medium. Said resolution shall deter-  
13 mine the form of the bonds, including the interest cou-  
14 pons to be attached thereto, if any, and shall fix the de-  
15 nomination or denominations of such bonds, and the place  
16 or places of the payment of the principal and interest  
17 thereof, which may be at any bank or trust company with-  
18 in or without the state, or at such other place as said  
19 resolution may provide. The bonds shall contain a state-  
20 ment on their face that the board shall not be obli-  
21 gated to pay the same, or the interest thereon, except  
22  
23

24 from the special fund derived from the net revenue  
25 of the athletic establishment, or a certain pro rata part  
26 thereof, as the case may be. All such bonds shall be, and  
27 shall have, and are hereby declared to have all the  
28 qualities and incidents of negotiable instruments, under  
29 the negotiable instruments law of this state. Provision  
30 may be made for the registration of any of the bonds  
31 in the name of the owner as to principal alone. Bonds  
32 shall be executed in such manner as the board may  
33 direct. The bonds shall be sold by the board in such  
34 manner as may be determined to be for the best inter-  
35 est of the board: *Provided, however,* That said bonds  
36 shall not be negotiated at a price lower than a price  
37 which when computed to maturity upon standard tables  
38 of bond values will show a net return of six per cent  
39 per annum to the purchaser upon the amount paid there-  
40 for. Any surplus of the proceeds from the sale of such  
41 bonds over and above the cost of such athletic establishment  
42 shall be paid into the sinking fund hereinafter provided.  
43 If the proceeds of the bonds shall be less than the cost of  
44 the athletic establishment, additional bonds may in like  
45 manner be issued to provide the amount of such deficit,  
46 and unless otherwise provided in the resolution author-  
47 izing the issuance of the bonds first issued, or in the trust  
48 indenture hereinafter authorized, shall be deemed to be  
49 of same issue, and shall be entitled to payment without  
50 preference or priority of the bonds first issued, but such  
51 preference or priority shall not extend to an amount  
52 exceeding ten per cent of the original issue. Prior to the  
53 preparation of the definite bonds, interim certificates may,  
54 under like restrictions, be issued with or without coupons  
55 exchangeable for definite bonds upon the issuance of the  
56 latter.

2       *Sec. 12. Obligations not to Bind Member of Board Per-*  
3 *sonally.*—No member of any board or any committee  
4 appointed by such board hereunder shall in any event be  
5 personally liable upon any contract or obligation of any  
6 kind or character executed under the authority contained  
7 in this article, even if said undertaking should hereafter  
be held ultra vires.

Sec. 13. *Additional Bonds for Extension or Improvements of Athletic Establishments.*—Any board may provide by the resolution authorizing the issuance of the bonds or in the trust indenture hereinafter referred to, that additional bonds may thereafter be authorized and issued at one time, or from time to time, under such limitations and restrictions as may be set forth in said resolution or trust indenture, for the purpose of extending or improving such athletic establishments when deemed necessary in the public interest, such additional bonds to be secured and be payable from the revenues of the athletic establishment, as provided in section eight of this article.

Sec. 14. *How Proceeds of Bonds Applied.*—All moneys received from the sale of any bonds issued pursuant to this article, after reimbursements and re-payments to said board of all amounts advanced for preliminary expenses, as provided in section five of this article, shall be applied solely to the payment of the costs of the athletic establishment, or to the appurtenant sinking fund, and there shall be, and hereby is created and granted a lien upon such money, until so applied, in favor of the holders of the bonds or the trustees hereinafter provided for.

Sec. 15. *Bonds Secured by Trust Indenture Between Board and Corporate Trustees.*—In the discretion and at the option of the board such bonds may be secured by a trust indenture by and between the board and a corporate trustee which may be a trust company or bank having powers of a trust company within or without the state of West Virginia, but no such trust indenture shall convey, mortgage or create any lien upon the athletic establishment or any part thereof.

The resolution authorizing the revenue bonds, and fixing the details thereof, may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bond holders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the board, and any committee appointed by the board under this article, in relation to the construction or acquisition of the ath-

18 letic establishment and the improvement, operation, re-  
19 pair, maintenance and insurance thereof, and the custody,  
20 safeguarding and application of all moneys, and may pro-  
21 vide that the athletic establishment shall be contracted  
22 for, constructed and paid for under the supervision and  
23 approval of the consulting engineers employed or desig-  
24 nated by the board and satisfactory to the original bond  
25 purchasers, their successors, assignees or nominees, who  
26 may be given the right to require the security given by  
27 contractors and by any depository of the proceeds of  
28 bonds or revenues of the athletic establishment or other  
29 moneys pertaining thereto shall be satisfactory to such  
30 purchasers, their successors, assignees or nominees. Such  
31 indenture may set forth the rights and remedies of the  
32 bond holders and such trustee. Except as in this article  
33 otherwise provided, the board may provide by resolution  
34 or in such trust indenture for the payment of the pro-  
35 ceeds of the sale of the bonds and revenues of the athletic  
36 establishment to such officer, board or depository, as it  
37 may determine, for the custody thereof, and for the  
38 method of distribution thereof, with such safeguards and  
39 restrictions as it may determine.

Sec. 16. *Sinking Fund; Purchase of Outstanding Bonds.*

2 —At or before the issuance of any such bonds, the board  
3 shall, by resolution, provide for a sinking fund for the  
4 payment of the bonds and the interest thereon, and the  
5 payment of the charges of banks or trust companies for  
6 making payment of such bonds, and interest, out of the  
7 net revenues of said athletic establishment, and shall set  
8 aside and pledge a sufficient amount of the net revenues  
9 of the athletic establishment to be paid by the board into  
10 such sinking fund at intervals to be determined by reso-  
11 lution adopted prior to the issuance of the bonds, for (a)  
12 the interest upon such bonds as the same becomes due;  
13 (b) the necessary fiscal agency charges for paying bonds  
14 and interest; (c) the payment of the bonds as they fall  
15 due, or if all bonds mature at one time, the maintenance  
16 of a proper sinking fund for the payment thereof at such  
17 time; and (d) a margin for safety and for the payment  
18 of premium upon bonds retired by call or purchase as



19 herein provided for, which margin, together with unused  
20 surplus of such margin carried forward from the pre-  
21 ceding year, shall equal ten per cent of all other amounts  
22 so required to be paid into the sinking fund. Such re-  
23 quired payments shall constitute a first charge upon all  
24 the net revenues of the athletic establishment. Net reve-  
25 nues as used herein shall mean the revenues of the ath-  
26 letic establishment remaining after the payment of rea-  
27 sonable expense of operation, repairs, maintenance, in-  
28 surance and all other reasonable costs of maintaining and  
29 operating the same required to be paid from the revenues  
30 thereof. After the payment into the sinking fund as here-  
31 in required, the board may at any time in its discretion  
32 transfer all or any part of the balance of the net revenues,  
33 after reserving an amount deemed by the board sufficient  
34 for operation, repairs, maintenance and depreciation for  
35 an ensuing period of not less than twelve months, into  
36 the sinking fund or into a fund for extensions, improve-  
37 ments and additions to such athletic establishment. All  
38 amounts for sinking fund and interest, as and when set  
39 apart for the payment of same, shall be remitted to the  
40 state sinking fund commission at such periods as shall be  
41 designated in the resolution, but in any event at least  
42 thirty days previous to the time interest or principal pay-  
43 ments become due, to be retained and paid out by said  
44 commission, consistent with provisions of this article and  
45 the order pursuant to which such bonds have been issued.  
46 The state sinking fund commission is hereby authorized  
47 to act as fiscal agent for the administration of such sinking  
48 fund under any resolution adopted pursuant to the pro-  
49 visions of this article and shall invest all sinking funds  
50 as provided by general law.

*Sec. 17. Charges for Use of Athletic Establishment.—*

2 The board shall have the power and it shall be its duty,  
3 by resolution to establish and maintain just and equitable  
4 charges and rentals as the case may be, for the use of  
5 such athletic establishment, and may readjust, amend and  
6 modify such charges and rentals from time to time. Such  
7 charges and rentals shall be in such amounts that the  
8 total thereof shall be at least sufficient in each year for

9 the payment of the proper and reasonable expenses of  
10 operation, repair, replacements and maintenance of the  
11 athletic establishment, and for the payment of the sums  
12 herein required to be paid into the sinking fund. A sched-  
13 ule of the charges and rentals so established shall be kept  
14 on file in the office of the board issuing such bonds and  
15 also in the office of the committee having charge of the  
16 operation of such athletic establishment, if there be such  
17 committee.

Sec. 18. *Accounting System; Yearly Audit; Custodian*  
2 *of Funds.*—Any board issuing revenue bonds under the  
3 provisions of this article, shall install and maintain a  
4 proper system of accounting showing the amount of  
5 revenue received and the application of same and the  
6 board shall, at least once a year, cause such accounts to  
7 be properly audited by a competent auditor and the re-  
8 port of such auditor shall be open for inspection at all  
9 reasonable times to any taxpayer, citizen of the county  
10 or any holder of bonds issued under the provisions of this  
11 article, or anyone duly authorized acting for and on be-  
12 half of such taxpayer, citizen or bond holder. The treas-  
13 urer of such board or other official or institution specifi-  
14 cally charged by such board with such duty, shall be  
15 custodian of the funds derived from revenues from such  
16 athletic establishment, and shall give proper bond for  
17 the faithful discharge of his or its duties as such custodian  
18 which bond shall be fixed and approved by the board.  
19 All of the funds received as revenue from said athletic  
20 establishment, and all funds received from the sale of  
21 revenue bonds issued under this article, shall be kept  
22 separate and apart from other funds of the board, and  
23 separate accounts shall be maintained from the several  
24 items required to be set up by section fifteen of this article.

Sec. 19. *Board to Pay Established Charges and Rentals*  
2 *for Use of Establishment.*—The board shall be subject  
3 to the same charges and rentals established as herein-  
4 before provided, or to charges and rentals established in  
5 harmony therewith, for the use of such athletic establish-  
6 ment, and shall pay such charges and rentals, when due,

7 from corporate funds, and the same shall be deemed to  
8 be a part of the revenues of the athletic establishment as  
9 herein defined, and may be applied as herein provided  
10 for the application of such revenues.

Sec. 20. *Operation Under Supervision and Control of Board; Leasing.*—The board may, in its discretion, provide by resolution that the custody, administration, operation and maintenance of such athletic establishment shall be under the supervision and control of a committee as provided by section three hereof, and in such case, the board may provide by resolution for said committee to exercise such of the functions of the board in connection with said establishment as they consider proper, and may provide for said committee to receive such compensation as such board may deem proper, all of which authority and compensation shall be specifically provided for by resolution. All compensation and expenses of such committee shall be paid solely from funds provided under the authority of this article. Such committee shall have power to establish by-laws, rules and regulations for its own government.

18 The board also, in its discretion, may provide by resolution for the leasing of such athletic establishment or any part thereof and provide for the custody, operation and maintenance thereof by a lessee in accordance with the provisions of such resolution and lease contract executed pursuant thereto: *Provided, however,* That the lessee shall pay to the board for the use of such athletic establishment, or part thereof, an amount which when added to other revenues therefrom shall be sufficient to provide a sinking fund for the payment of the bonds and the interest thereon and all other charges mentioned in section sixteen hereof.

Sec. 21. *When Statutory Mortgage Lien Created; Enforcement by Bond Holders; Receivership.*—In the event bonds issued hereunder are not secured by a trust indenture as provided for in section fifteen of this article, there shall be, and there is hereby, created a statutory mortgage lien upon such athletic establishment acquired or constructed under the provisions of this article, which

8 shall exist in favor of the holder of said bonds, and each  
9 of them, and to and in favor of the holder of the coupons  
10 attached to said bonds, and such athletic establishment  
11 shall remain subject to such statutory mortgage lien until  
12 payment in full of the principal and interest of said bonds.  
13 Any holder of bonds issued under the provisions of this  
14 act, or of any coupons representing interest accrued there-  
15 on, may, either at law or in equity, enforce the statutory  
16 mortgage lien hereby conferred and may, by proper suit,  
17 compel the performance of the duties of the board set  
18 forth in this article.

Sec. 22. *Acquisition of Property on Which Lien Ex-*  
2 *ists.*—No property shall be acquired under this article  
3 upon which any lien or other encumbrance exists, unless  
4 at the time such property is acquired a sufficient sum of  
5 money, derived from the sale of bonds issued hereunder  
6 or otherwise, be deposited in trust to pay and redeem  
7 such lien or encumbrance in full.

Sec. 23. *Protection and Enforcement of Rights of*  
2 *Bondholders; Receivership, Including Lessee.*—Any hold-  
3 er of any such bonds or any of the coupons attached  
4 thereto, and the trustee, if any, except to the extent that  
5 the rights herein given may be restricted by the resolu-  
6 tion authorizing issuance of the bonds or by the trust  
7 indenture, may either at law or in equity, by suit, action,  
8 mandamus, or other proper proceeding protect and en-  
9 force any and all rights granted hereunder or under such  
10 resolution or trust indenture and may enforce and com-  
11 pel performance of all duties required by this article, or  
12 by such resolution or trust indenture to be performed by  
13 the board or the committee, including the making and  
14 collecting of reasonable and sufficient charges and rentals  
15 for the use of such athletic establishment. If there be  
16 default in the payment of the principal or interest of  
17 any of the bonds on the date therein named for such pay-  
18 ment, which default continues for a period of sixty days,  
19 any court having jurisdiction may appoint a receiver to  
20 administer the athletic establishment on behalf of the  
21 board, the bond holders and trustee, if any, subject to  
22 the restrictions in the resolution or trust indenture, if any,

23 with power to charge and collect charges and rentals  
24 sufficient to provide for the payment of the expenses of  
25 operation, repair and maintenance, and also to pay any  
26 bonds and interest outstanding and to apply the revenues  
27 in conformity with this article and said resolution and  
28 trust indenture, if any; and the power herein provided  
29 for the appointment of a receiver shall apply to cases  
30 where such athletic establishment is operated by a lessee  
31 of the board as well as to cases where operated by the  
32 board. In case a receiver is appointed for an athletic  
33 establishment operated by a lessee, the lease agreement  
34 then existing between the board and the lessee shall be  
35 automatically terminated and all property, equipment, ac-  
36 counts receivable and assets of every kind used in con-  
37 nection with the operation of such athletic establishment  
38 shall pass to the receiver, and upon the termination of  
39 such receivership, such athletic establishment, property,  
40 equipment, accounts receivable and assets of every kind  
41 then in the hands of the receiver shall pass again to the  
42 board.

2       Sec. 24. *Article Confers Additional Powers.*—The au-  
3       thority herein given shall be in addition to and not in  
4       derogation of any power existing in any board under any  
5       constitutional, statutory or other provisions of the law  
6       which it now may have or may hereafter acquire.

2       Sec. 25. *Construction of Powers Conferred.*—This ar-  
3       ticle shall, without reference to any other statute, be  
4       deemed full authority for the construction, acquisition,  
5       improvement, equipment, maintenance, operation and  
6       repair of the athletic establishment herein provided for,  
7       and for the issuance and sale of bonds by this article  
8       authorized, and shall be construed as an additional alter-  
9       native method therefor, and for the financing thereof, and  
10      no petition or other or further proceeding in respect to  
11      the construction or acquisition or improvement of such  
12      athletic establishment, or to the acquisition or sale of  
13      bonds for the improvement of such athletic establishment,  
14      or in respect to the issuance or sale of bonds under this  
15      article, and no publication of any resolution, notice, or  
16      proceeding relating to such construction, improvement

16 or acquisition, or to the issuance or sale of such bonds  
17 shall be required, except such as are prescribed under  
18 this article, any provisions of other statutes of the state  
19 to the contrary notwithstanding.

Sec. 26. *Article Liberally Construed.*—This article be-  
2 ing for the public health, safety, and welfare, shall be  
3 liberally construed to effectuate the purposes thereof.

## CHAPTER 105

(Senate Bill No. 108—By Mr. Mitchell)

AN ACT to amend and reenact article one, chapter fifteen of  
the code of West Virginia, one thousand nine hundred  
thirty-one, as amended, relating to the national guard.

[Passed February 24, 1949; in effect July 1, 1949. Approved by the Governor.]

### Article 1. National Guard.

#### Section

1. Reorganization of national guard.
2. Commander-in-chief; appointment of officers.
3. National guard; service within or without state.
4. Federal laws and regulations.
5. How national guard constituted and organized.
6. Composition of units.
7. Governor's staff; adjutant general.
8. Promotion of officers.
9. Oath of commissioned officers.
10. Surplus officers.
11. Resignation of officers; removal.
12. Reserve list; dismissal of officers.
13. Noncommissioned officers; appointment.
14. Reduction of noncommissioned officers.
15. Enlistments.
16. Enlistment papers.
17. Discharge of enlisted men.
18. Dishonorable discharge.
19. Unlawful military organizations; penalty.
20. Uniforms, arms, equipment and supplies.
21. Military property.
22. Offenses concerning property; penalty.
23. Unlawful wearing of uniforms; penalty.
24. Annual inspection and muster.
25. Drills; target practice.
26. Camp or maneuver duty.
27. Warning for duty; exemption from arrest.
28. Absence from drill, parade or other duty; penalty.
29. Calling out national guard by governor.

30. Calling on governor or commander for aid; summons.
31. When order by civil officers to be in writing; compliance with written orders.
32. Command to assembly or mob to disperse.
33. Penalty for failure to disperse.
34. Power of officers.
35. Assaults on national guard or persons aiding them; penalty.
36. Repelling assault.
37. Failure to retire from unlawful assembly; penalty.
38. National guard to have right of way.
39. Regulation of occupancy of streets for passage of national guard.
40. Transportation of officers and men.
41. Suits against officers or persons acting under military authority; security for costs.
42. Change of venue of prosecutions or suits against members of national guard.
43. Pay and allowances.
44. Command pay; inspection; compensation for clerical services and care of property.
45. Injury while in service.
46. Military fund.
47. Military expenses.
48. Military courts; jurisdiction.
49. Courts-martial; general.
50. Appointment and composition of military courts.
51. Forms, practice; procedure.
52. Courts-martial; personnel.
53. Secrecy of proceedings.
54. Powers of president; witnesses; oaths.
55. Charges; trial.
56. General court-martial; offenses by commissioned officers; penalties.
57. Special court-martial; offenses by commissioned officers; penalties.
58. General court-martial; offenses by enlisted men; penalties.
59. Special court-martial; summary court-martial; offenses by enlisted men; penalties.
60. Form of summons.
61. Service of summons; penalty for failure.
62. Trial; judgment; duties of sheriff; penalty.
63. Form of execution; presumption of jurisdiction of military courts.
64. Courts of inquiry.
65. Disorderly conduct before military court; penalty.
66. Record and approval of court-martial sentence.
67. Reconvening court-martial.
68. Collection and disposition of fines.
69. Execution in aid of collection of fines and penalties.
70. Failure of sheriff to execute process or return fines.
71. Actions against members of military courts.
72. Trial by civil authorities.
73. Armory board; how constituted; duties.
74. Control of armories; acquisition of sites; appropriations and expenditures therefor; consent to acceptance of federal funds.
75. Control of new armories; rules and regulations.
76. Municipal aid for armory purposes; issuance of bonds.
77. Funds for armory purposes.
78. Disposition of abandoned or unsuitable armories.
79. Regulations while military forces on duty.
80. Governor to make rules and regulations.

- 81. United States army regulations.
- 82. Leave of absence for public officials and employees.
- 83. Contributing members.
- 84. General penalty; jurisdiction.

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

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

Section 1. *Reorganization of National Guard.*—The  
2 governor of this state is authorized to reorganize the  
3 national guard of West Virginia under the provisions of  
4 the National Defense Act of June third, nineteen hun-  
5 dred sixteen, and amendments thereto. He is author-  
6 ized to appoint an adjutant general under whose direc-  
7 tion the national guard shall be reorganized and main-  
8 tained.

Sec. 2. *Commander-in-Chief; Appointment of Officers.*  
2 —The governor shall be commander-in-chief of all mili-  
3 tary forces of the state except those which may be in  
4 the service of the United States and during such service.  
5 It shall be the duty of the governor to appoint and com-  
6 mission all officers of the military forces of the state, who  
7 shall be selected from the classes prescribed in the Na-  
8 tional Defense Act, and to issue necessary regulations  
9 for the government of such forces.

Sec. 3. *National Guard; Service Within or Without*  
2 *State.*—The organized militia of the state shall constitute  
3 and be known as the West Virginia national guard, and  
4 shall be liable at all times to be ordered into active serv-  
5 ice, and all, or any part thereof, may be turned over by  
6 the governor into the service of the United States, on  
7 requisition by the president, for service without the  
8 state: *Provided*, That no officer or enlisted man shall  
9 be held to such service for a period longer than that of  
10 the remaining time to be served by such officer or en-  
11 listed man under the term of his commission or enlist-  
12 ment. When the national guard of this state, or any part  
13 thereof, is called for under the constitution and laws of  
14 the United States, the governor shall order out for serv-



15 ice the national guard or such part thereof as may be  
16 necessary. During the absence of organizations of the  
17 national guard in the service of the United States, their  
18 state designation shall not be given to new organizations,  
19 and all organizations and officers on return from such  
20 service shall be given their former standing and rank,  
21 providing it can be feasibly done.

Sec. 4. *Federal Laws and Regulations.*—The duty of  
2 maintaining and governing the national guard not in  
3 the service of the United States rests upon the state,  
4 subject to the constitutional authority of Congress. The  
5 purpose of the force is national defense. Its efficiency as  
6 an agent for national defense necessarily depends upon  
7 systematic uniformity in the organization, composition,  
8 arms, equipment, training and discipline of its component  
9 parts. The attainment of such uniformity and efficiency  
10 requires on the part of each state a rigid adherence to  
11 federal laws and regulations relating to the national  
12 guard. Therefore, the governor shall cause the national  
13 guard of this state always to conform to all such federal  
14 laws and regulations as are now or may hereafter from  
15 time to time become operative and applicable, notwith-  
16 standing anything in the laws of this state to the con-  
17 trary.

Sec. 5. *How National Guard Constituted and Organ-  
2 ized.*—The national guard of West Virginia shall be or-  
3 ganized and equipped in accordance with the provisions  
4 of the national military establishment regulations gov-  
5 erning same. The governor shall at all times have the  
6 power to create new organizations whenever, in his judg-  
7 ment, the efficiency of the state force will thereby be  
8 increased, except insofar as such action would be con-  
9 trary to the provisions of the regulations of the national  
10 military establishment governing the national guard; and  
11 he is hereby directed to organize a unit or units and equip  
12 same, composed of negro troops which unit or units shall  
13 be organized and equipped in accordance with the pro-  
14 visions of the U. S. Army regulations governing same, and  
15 he shall at any time have power to change the organiza-  
16 tion of departments, organizations and units so as to con-

17 form to any organization, system of drill, or instruction  
18 now or hereafter adopted for the Army of the United  
19 States, and for that purpose the number of officers of the  
20 organizations and units may be increased or diminished  
21 and their rank increased or reduced to the extent made  
22 necessary by such change. The officers of the foregoing  
23 departments shall be of like rank as officers of similar  
24 departments of the national military establishment of  
25 the United States and shall perform like duties. The  
26 number of such officers shall be determined by the gov-  
27 ernor, but this number shall be limited to the actual  
28 requirements of the different departments and the gov-  
29 ernor may designate one officer as chief of a number of  
30 different departments, unless such action would be con-  
31 trary to the regulations provided by the national mili-  
32 tary establishment for the government of the national  
33 guard. The governor shall have the power, in case of  
34 war, insurrection, invasion or imminent danger thereof,  
35 to increase the force beyond the maximum now estab-  
36 lished by law and to organize the same with the proper  
37 officers as the exigencies of the service may require. In  
38 the event of the formation of any such new organiza-  
39 tions, officers holding commissions in the national guard  
40 as organized at such time shall be eligible for commis-  
41 sion in such new organizations and units with like or  
42 higher grade and rank, if found capable. after examina-  
43 tion by an authorized board, and shall be given prefer-  
44 ence over the one not holding commission at the time.

2       Sec. 6. *Composition of Units.*—The number and grades  
3 of officers and enlisted men of the state staff shall be as  
4 prescribed by federal law and regulations thereunder  
5 issued by direction of the secretary of defense. In case  
6 of emergency, line officers of the national guard, active  
7 or reserve, may be temporarily detailed by the governor  
8 for staff duty.

9       All officers of the staff and subordinate units shall be  
10 appointed by the governor from officers or ex-officers  
11 who have had previous military experience of not less  
12 than two years, or as provided in section eight, and shall  
hold their respective grades until they reach the retire-

13 ment age as established and prescribed by currently con-  
14 trolling federal regulations, unless they resign or are  
15 discharged for disability, or by reason of the findings of  
16 a court-martial legally convened for the trial of such  
17 officers, and vacancies shall be filled by appointment of  
18 persons fulfilling the above requirements of this section.

Sec. 7. *Governor's Staff; Adjutant General.*—The  
2 staff of the governor shall consist of one adjutant general  
3 with rank of brigadier general, an assistant adjutant gen-  
4 eral with rank not above that of colonel, and, in addition  
5 thereto, such other officers as may be currently prescribed  
6 by existing tables of organization as established by federal  
7 authority. The governor may also appoint and commis-  
8 sion an honorary staff to serve during his term of office, of  
9 such number as he may deem advisable, with such rank  
10 as he may fix, which honorary staff will not be held to  
11 be a part of the regularly organized militia.

12 The adjutant general shall be appointed and commis-  
13 sioned by the governor, but no person shall be appointed  
14 adjutant general unless such person has had at least six  
15 years' service in the national guard of this or some other  
16 state, or in the armed forces of the United States, or in all  
17 combined.

18 In time of peace he shall perform the duties of chief of  
19 the pay, quartermaster and ordnance departments unless  
20 otherwise ordered by the governor, and shall give bond  
21 in such sum as the governor may require, such bond to  
22 be provided in like manner as the bonds of other officers.  
23 He shall receive a compensation of six thousand dollars  
24 per annum, which shall be paid to him in equal monthly  
25 installments, and his term of office shall be for four years.  
26 He shall attest, record, and seal with the seal of the state  
27 all commissions issued by the governor, and keep a regis-  
28 ter of all commissioned officers, with dates of commission,  
29 and all changes occurring in the commissioned force, and  
30 shall keep a full and complete record at all times of the  
31 organized militia of the state. He shall, as soon as possible  
32 after the first day of July in even years, make a biennial  
33 report to the governor of the transactions and the expendi-  
34 tures of his department and the condition of the national

35 guard. Such report shall show all receipts into the mili-  
36 tary or militia fund of the state from every source, includ-  
37 ing fines, appropriations from the state, and all money  
38 received from the federal government and from every  
39 other source. All such funds and moneys shall be paid  
40 into the state treasury as soon as received, and shall be  
41 credited to the military fund. Such report shall also  
42 show in detail all expenditures made from each fund, and  
43 the purpose of the expenditures, and shall state such  
44 other details as the governor may order; and the report  
45 shall be communicated by the governor to the next session  
46 of the Legislature. He shall also make such other reports  
47 and returns as may be required by the governor from time  
48 to time. He shall cause to be procured, prepared and issued  
49 to the different organizations of the national guard all  
50 necessary books and blanks for reports, records, returns  
51 and general administration, and shall, at the expense of the  
52 state, cause the military laws, military code, and rules and  
53 regulations in force to be printed, bound in proper form,  
54 and distributed, one copy to each commissioned officer, and  
55 one each to all the circuit, intermediate and criminal court  
56 judges, sheriffs, assessors, and justices of the peace in the  
57 state requiring them; and shall procure and supply all  
58 necessary text books of drill and instruction. He shall keep  
59 in his office an accurate account of all state and United  
60 States property issued to the state. He shall keep on file in  
61 his office all official bonds, except the bond of the adjutant  
62 general, which shall be filed with the auditor of the  
63 state; the reports and returns of troops and heads of mili-  
64 tary departments; and all other writings and papers which  
65 are required to be transmitted to and preserved at the  
66 general headquarters of the state militia. He shall em-  
67 ploy such clerical force and assistants as may be required  
68 in the military department, in addition to the assistant  
69 adjutant general herein authorized, which assistant ad-  
70 jutant general shall receive a compensation of four thou-  
71 sand eight hundred dollars per annum, payable in equal  
72 monthly installments. He shall keep records of all service  
73 personnel from the state of West Virginia, commissioned  
74 or enlisted, in any of the wars of the United States, and of  
75 individual claims of citizens of West Virginia for service

76 rendered in such wars. He shall assist all persons residing  
77 in this state having claims against the United States for  
78 pension, bounty or back pay, or such claims as have arisen  
79 out of, or by reason of, service in any of said wars. To this  
80 end he shall cooperate with the agents or attorneys of such  
81 claimants, furnish to claimants only all necessary certificates or certified abstracts from, or copies of, records or  
82 documents in his office, and shall in all practicable ways  
83 seek to secure speedy and just action in all claims now  
84 pending or which may hereafter be filed: *Provided*, That  
85 any and all of the above services shall be rendered without  
86 charge to the claimant. He shall establish and maintain  
87 as a part of his office a bureau of records of the services of the West Virginia troops during such wars, and  
88 shall keep arranged in proper and convenient form all  
89 records and papers pertaining thereto.  
90  
91

Sec. 8. *Promotion of Officers.*—Appointment and promotion of officers shall be made in conformity with currently existing rules and regulations of the federal military establishment governing eligibility and procedure, but nothing herein shall be construed to limit the power of the governor to appoint, commission, and promote an officer in the national guard for state service only.

Sec. 9. *Oath of Commissioned Officers.*—Every officer duly commissioned shall, within ten days after his commission is tendered to him, or within ten days after he shall be personally notified that the same is held in readiness for him by any superior officer, take and subscribe to the constitutional oath of office. In case of neglect or refusal to take and subscribe to such oath within the time mentioned, he shall be deemed to have resigned such office. Such oath shall be taken and subscribed before any officer authorized to take acknowledgments of deeds in this state, or some officer who has taken it himself and who is hereby authorized to administer the same. All military officers attesting oaths required by the provisions of this article shall do so without fee.

Sec. 10. *Surplus Officers.*—Commissioned officers who shall be rendered surplus by reduction, consolidation, or

3 disbandment of organizations, or in any manner provided  
4 by law, may be transferred to the inactive national guard  
5 in conformity with currently existing rules and regula-  
6 tions prescribed by federal authority, or may be dis-  
7 charged.

Sec. 11. *Resignation of Officers; Removal.*—No resig-  
2 nation shall be accepted unless the officer tendering the  
3 same shall furnish to the adjutant general a certificate  
4 from each property accounting officer that he has deliv-  
5 ered all books and other property of the state in his pos-  
6 session to the officer authorized to receive the same, and  
7 that his accounts for money or public property are cor-  
8 rect, and that he is not indebted to the state or federal  
9 military authorities. No commissioned officer shall be  
10 removed from office, unless by the senate on recommen-  
11 dation of the governor, stating the grounds on which such  
12 removal is recommended, or by the decision of a court-  
13 martial, or an examining board, or pursuant to law.

Sec. 12. *Reserve List; Dismissal of Officers.*—Any com-  
2 missioned officer who shall have served for a continuous  
3 period of ten years may, upon his own request, be placed  
4 upon the reserve list and withdrawn from active service  
5 and command by order of the governor, and the vacancy  
6 thereby created shall be filled in the same manner as  
7 other vacancies. Any commissioned officer who has be-  
8 come or shall become disabled, and thereby incapable of  
9 performing the duties of his office, shall be withdrawn  
10 from service and command and placed on the reserve  
11 list, and any commissioned officer who has, or shall  
12 hereafter become unfit or incompetent, and thereby in-  
13 capable of performing the duties of his office, shall be  
14 dismissed. Such transfer or dismissal shall be by order  
15 of the governor, and, before making such order, the gov-  
16 ernor shall appoint a board of not less than three nor  
17 more than five commissioned officers, one of whom shall  
18 be a medical officer, whose duty it shall be to determine  
19 the facts as to the nature and cause of incapacity of such  
20 officer as appears disabled, unfit or incompetent from  
21 any cause to perform military service, and whose case

22 shall be referred to it by the governor. No officer whose  
23 rank or promotion would be affected by the decision of  
24 such board, in any case that may come before it, shall  
25 participate in the examination or decision of the board  
26 in such case. Such board is hereby invested with the  
27 powers of courts of inquiry and courts-martial, and, when-  
28 ever it finds an officer incapacitated for active service,  
29 shall report such facts to the governor, stating the cause  
30 of incapacity, whether from disability, unfitness or in-  
31 competency, and if he approves such findings, such officer  
32 shall be placed on the reserve list or dismissed as pro-  
33 vided in this section. The members of the board shall,  
34 before entering upon the discharge of their duties, be  
35 sworn to an honest and impartial performance of their  
36 duties as members of such board. No officer shall be  
37 placed upon the reserve list or dismissed by the action  
38 of such board without having had a fair and full hearing  
39 before the board, if upon due notice he shall demand it.  
40 It shall not be necessary to refer any case arising under  
41 this section for the action of such board, unless the offi-  
42 cers designated by the governor to be placed on the re-  
43 serve list or dismissed shall, within twenty days after  
44 being notified that they will be so transferred or dismissed,  
45 serve on the adjutant general notice in writing that they  
46 demand a hearing and examination before such board.

Sec. 13. *Noncommissioned Officers; Appointment.*—All  
2 noncommissioned officers of the staff, corps, departments  
3 and other organizations of the national guard shall be  
4 appointed by the appointing authority prescribed by fed-  
5 eral law and regulations which are now or may hereafter  
6 from time to time become operative and applicable.

Sec. 14. *Reduction of Noncommissioned Officers.*—The  
2 officer warranting noncommissioned officers shall have  
3 power to reduce, or reduce to the ranks, on the applica-  
4 tion of the immediate commanding officer of the organ-  
5 ization to which he belongs, for good and sufficient rea-  
6 sons, the noncommissioned officers of his command: *Pro-*  
7 *vided, however,* That in active service for the state, in  
8 cases requiring immediate example, a noncommissioned

9 officer may be reduced to the ranks by his immediate  
10 commander, subject to appeal to, and review and ap-  
11 proval by, the officer warranting him.

Sec. 15. *Enlistments*.—Able-bodied men of good char-  
2 acter who conform in all respects to the qualifications pre-  
3 scribed by federal law and regulations now in force, or  
4 that may hereafter become operative and applicable, gov-  
5 erning enlistment in the national guard, may be enlisted  
6 in the national guard of West Virginia under the same  
7 conditions and the same enlistment period as are now,  
8 or may hereafter be, prescribed by federal law for the  
9 national guard of the United States. Every enlisted man,  
10 if in active service, may continue to be held for duty for  
11 a period not exceeding three months after the expiration  
12 of his term of enlistment or reenlistment, and shall re-  
13 tain rank and be eligible to promotion until he is actual-  
14 ly discharged. When an organization is consolidated or  
15 disbanded, its enlisted men discharged by reason there-  
16 of who shall hereafter reenter the service shall have al-  
17 lowed to them as part of their term of service the time  
18 already served. An enlisted man may be transferred from  
19 one organization to another upon such regulations as the  
20 governor may prescribe.

Sec. 16. *Enlistment Papers*.—Every person recruited for  
2 the national guard shall sign an enlistment paper, which  
3 shall be forwarded to the adjutant general, of such form  
4 as may be prescribed, which shall contain an oath of al-  
5 legiance to the state and the United States. Such oath  
6 of allegiance may be taken before any commissioned of-  
7 ficer of the national guard, who is hereby authorized to  
8 administer the same, or before any civil officer duly au-  
9 thorized to administer oaths.

Sec. 17. *Discharge of Enlisted Men*.—Whenever any en-  
2 listed man of the national guard shall have performed  
3 service therein for the term of his enlistment or reenlist-  
4 ment, and has turned in to the proper officer all state or  
5 military property for which he is responsible, his com-  
6 manding officer shall grant him a full and honorable dis-  
7 charge, except in time of insurrection or invasion. Dis-



8 charge for physical disability shall be granted pursuant  
9 to applicable rules and regulations. The governor may  
10 authorize for sufficient reason, and in his discretion, the  
11 discharge of enlisted men, with or without their consent,  
12 at any time, upon the recommendation of the command-  
13 ing officer of the unit, organization or squadron to which  
14 they belong. An enlisted man who cannot, after due dili-  
15 gence, be found, or who shall remove his residence from  
16 the state, or to such a distance from the armory of his  
17 organization, as to render it impracticable for him to  
18 perform properly military duties, or who shall be con-  
19 victed of a felony, may be discharged by order of the  
20 governor.

21 Enlisted men may be honorably discharged, discharged,  
22 or discharged dishonorably; but in no case may an en-  
23 listed man be dishonorably discharged unless by sentence  
24 of a general court-martial, except as hereinafter provided.  
25 No enlisted man shall be honorably discharged from serv-  
26 ice unless he produces the certificate of his immediate  
27 commanding officer that he has turned over or satisfac-  
28 torily accounted for all property issued to him.

Sec. 18. *Dishonorable Discharge.*—A dishonorable dis-  
2 charge from service in the national guard shall operate  
3 as a complete expulsion from the guard, a forfeiture of all  
4 exemptions and privileges acquired through membership  
5 therein, and disqualification for any military office under  
6 the state. The names of all persons dishonorably dis-  
7 charged shall be published in orders by the adjutant gen-  
8 eral at the time of such discharge, and in two newspapers  
9 of opposite politics and general circulation, if such there  
10 be in the locality in which such dishonorably discharged  
11 person resides, and a complete list of all such dishonor-  
12 ably discharged persons shall be kept posted in all the  
13 armories in the state. No persons so discharged shall be  
14 admitted to any armory or other meeting place of the  
15 national guard or to the immediate vicinity of any en-  
16 campment, drill or parade of troops. All commanding  
17 officers are hereby required to enforce these prohibitions.

Sec. 19. *Unlawful Military Organizations; Penalty.*—It

2 shall be unlawful for any body of men whatever, other  
3 than the regularly organized national guard or the troops  
4 of the United States, to associate themselves together as  
5 a military company or organization in this state: *Pro-*  
6 *vided*, That the governor may grant permission to public  
7 or private schools of the state to organize themselves  
8 into companies of cadets, and may furnish such cadets,  
9 under proper restrictions, such obsolete ordnance stores  
10 and equipment owned by the state as are not in use by  
11 the national guard. Whosoever offends against the provi-  
12 sions of this section, or belongs to or parades with any  
13 such unauthorized body of men with arms, shall be pun-  
14 ished with a fine of not exceeding one hundred dollars  
15 or imprisoned for a term not exceeding six months.

Sec 20. *Uniforms, Arms, Equipment and Supplies.*—

2 The uniforms, arms, equipment and military supplies  
3 necessary for the proper performance of the duties re-  
4 quired by this article shall be similar to those prescribed  
5 for the army of the United States. Commissioned officers  
6 shall provide themselves with the uniform, arms and  
7 equipment lawfully prescribed and approved, and there  
8 shall be allowed annually, to aid them in procuring and  
9 maintaining same in condition for service, the sum of  
10 seventy-five dollars each: *Provided, however*, That on  
11 and after July one, one thousand nine hundred fifty-one,  
12 the annual sum of one hundred dollars shall be allowed.  
13 All uniforms, arms, equipment and other property shall  
14 be issued to organizations of the national guard, and  
15 accounted for under such regulations as the governor may  
16 prescribe.

Sec. 21. *Military Property.*—All officers shall be respon-

2 sible for the safe keeping and return of all military prop-  
3 erty committed to their charge, but no such property shall  
4 be issued until suitable bond shall be given by such offi-  
5 cers, in an amount and with security approved by the  
6 governor, for the safe keeping and return of the same.  
7 Whenever property is ordered transferred by the gov-  
8 ernor from one unit to another, the officer turning the  
9 property over shall be held responsible for the same until  
10 he has received a receipt from the officer to whom the

11 transfer is ordered to be made. In case of state property  
12 worn out and become worthless in the service of the state,  
13 an inspector shall have power to condemn the same and  
14 authorize the officer responsible to drop it from his re-  
15 turns, but no inspecting officer shall exercise this power  
16 except when inspecting such property under authority of  
17 the governor. Any officer who shall neglect or refuse to  
18 properly account for any military property he shall have  
19 received shall be guilty of a misdemeanor, and, upon con-  
20 viction thereof, shall be punished as provided in section  
21 eighty-four.

Sec. 22. *Offenses Concerning Property; Penalty.*—Who-  
2 ever shall secrete, sell or dispose of, or offer for sale,  
3 or purchase, knowing the same to be such, retain after  
4 proper demand is made, or in any manner pawn or pledge,  
5 any military property, which shall have been issued  
6 under the provisions of this article, shall be guilty of a  
7 misdemeanor, and, in addition to the punishment pro-  
8 vided for misdemeanors in this article, shall forfeit to  
9 the state twice the cost of the property so secreted, sold,  
10 disposed of, offered for sale, or purchased, retained after  
11 proper demand has been made, pawned or pledged.

Sec. 23. *Unlawful Wearing of Uniforms; Penalty.*—Any  
2 person who shall wear any uniform or any device, strap,  
3 knot, or insignia of any design or character, used as a  
4 designation of grade, rank or office, such as are by law  
5 or regulations, duly promulgated, prescribed for the use of  
6 the national guard, or similar thereto, except members  
7 of the army or navy of the United States or the national  
8 guard of this or any other state, members of associations  
9 wholly composed of soldiers honorably discharged from  
10 the service of the United States, or the members of the  
11 Order of Sons of Veterans, shall be guilty of a misde-  
12 meanor, and, on conviction thereof, shall be fined not  
13 less than ten nor more than one hundred dollars, and any  
14 member of the national guard who shall, when not on  
15 duty, wear any such uniform or equipment issued by the  
16 state without the permission of his commanding officer,  
17 shall be subject to a fine of not more than fifty dollars.

Sec. 24. *Annual Inspection and Muster.*—An annual

2 inspection and muster of each organization of the national  
3 guard shall be made by an inspector at such time and place  
4 as the governor shall order and direct.

Sec. 25. *Drills; Target Practice.*—Organization and unit  
2 commanders may in their discretion order drills of such  
3 portion of their command as may be deemed necessary;  
4 and may in their discretion order target practice for their  
5 command: *Provided*, That if any expense is to be in-  
6 curred, authority must be obtained from the adjutant  
7 general.

Sec. 26. *Camp or Maneuver Duty.*—The governor, ex-  
2 cept as provided in section forty-six, shall cause the na-  
3 tional guard to perform at least five consecutive days of  
4 camp or maneuver duty in each calendar year, exclusive  
5 of the time consumed by troops in going to and returning  
6 from camp, and shall designate the time and place there-  
7 for. The commanding officer of an encampment may fix  
8 certain bounds within the limits of the camp ground, not  
9 including any public road, within which no spectator shall  
10 enter without leave, and whoever does enter within such  
11 boundary, either with or without permission, may be  
12 expelled therefrom by the commanding officer, or by  
13 his order, and whoever intrudes within such limits when  
14 forbidden to do so, or, after entering by permission, con-  
15 ducts himself in a disorderly manner, or whoever resists  
16 a sentry or guard acting under orders to prevent such  
17 entry, or to prevent disorderly conduct, or to expel any  
18 person or persons ordered to leave such boundary, may  
19 be arrested by the commanding officer, or by his order,  
20 and taken before a justice of the peace of the county in  
21 which such camp is located, and, upon conviction, shall  
22 be fined not less than ten nor more than one hundred  
23 dollars, and the costs of prosecution, and committed to the  
24 jail of the county until such fine and costs are paid.

Sec. 27. *Warning for Duty; Exemption from Arrest.*—  
2 Officers and enlisted men shall be warned for duty in  
3 the manner prescribed by the governor in orders or regu-  
4 lations. No person belonging to the military forces of  
5 the state, while performing military duty under proper  
6 orders of his superior officers, shall be arrested on civil

7 process, nor shall any person belonging to the military  
8 forces of the state, while performing military duty under  
9 proper order of his superior officer, be arrested on crim-  
10 inal process, except upon process from a circuit or crim-  
11 inal court or a judge thereof in vacation.

Sec. 28. *Absence from Drill, Parade or Other Duty;*

2 *Penalty.*—Organization and unit commanders of the na-  
3 tional guard, upon receiving information as to the where-  
4 abouts of any officer or enlisted man of their organization  
5 who is absent from any drill, parade or other prescribed  
6 duty without having been properly excused, may cause  
7 such officer or enlisted man to be taken into custody and  
8 forthwith conveyed to the organization rendezvous to be  
9 there kept until such duty is completed or until relieved  
10 by the organization commander; and said organization  
11 commander is hereby authorized to direct any or all  
12 members of his command at his discretion to apprehend  
13 such officer or enlisted man and convey him to the organ-  
14 ization rendezvous.

15 Enlisted men who shall, without proper excuse, be ab-  
16 sent from or in any other respect be delinquent at, any  
17 drill, parade, encampment, meeting for instruction, or  
18 other duty ordered by competent authority, may be fined  
19 by a summary court not more than five dollars, and im-  
20 prisoned not more than five days in jail for each offense  
21 or delinquency.

22 The aggregate punishment under this section shall not  
23 exceed thirty days' jail sentence at any one time.

Sec. 29. *Calling out National Guard by Governor.*—In  
2 event of war, insurrection, rebellion, invasion, tumult,  
3 riot, mob or body of men acting together by force with  
4 intent to commit a felony or to offer violence to persons  
5 or property, or by force and violence to break and resist  
6 the laws of this state or the United States, or in case of  
7 the imminent danger of the occurrence of any of said  
8 events, or in event of public disaster, the governor shall  
9 have power to order the West Virginia national guard, or  
10 any part thereof, into the active service of the state, and  
11 to cause them to perform such duty as he shall deem  
12 proper.

Sec. 30. *Calling on Governor or Commander for Aid;*

2 *Summons.*—In case of any breach of the peace, tumult,  
3 riot, unlawful assemblage, or resistance of law, or immin-  
4 ent danger thereof, which cannot be speedily suppressed  
5 or effectually prevented by the ordinary posse comi-  
6 tatus and peace officer, it shall be the duty of the judge of  
7 any court of record, sheriff of any county, or mayor of any  
8 city, town or village to call upon the governor for aid,  
9 and in cases where the emergency is such as not to admit  
10 of this delay, upon the commander of any organization or  
11 unit, and it shall be the duty of the organization or unit  
12 commander upon whom such call is made, to order out,  
13 in aid of the civil authorities, the military force or any  
14 part thereof under his command. Such call for aid shall  
15 be by means of a summons issued by such judge, sheriff,  
16 or mayor, directed to the commander of any such unit  
17 or organization, directing him to order his command, or  
18 such part thereof as in the judgment of such commanding  
19 officer may be necessary, to appear at a time and place  
20 therein specified to aid the civil authority in supporting  
21 the laws; which summons shall be in substance, as fol-  
22 lows:

23 The State of West Virginia,

24 To (insert the officer's title) A.B.,

25 Commanding (insert his command), Greetings:

26 Whereas, It has been made to appear to (the sheriff or  
27 mayor, as the case may be), of (the county, city or town),  
28 of \_\_\_\_\_, that (here state one or  
29 more of the causes above mentioned), in our \_\_\_\_\_  
30 \_\_\_\_\_ of \_\_\_\_\_, and that military  
31 force is necessary to aid the civil authority in suppressing  
32 the same, and the urgency is such as not to admit of the  
33 delay necessary in calling upon the governor for military  
34 aid; Now, therefore, we command you that you cause  
35 your command, or such part thereof as may be necessary,  
36 armed and equipped with ammunition, and with proper  
37 officers, to parade at \_\_\_\_\_ on \_\_\_\_\_,  
38 then and there to obey such orders as may be given ac-  
39 cording to law. Hereof fail not at your peril and have you  
40 there this summons, with your doings returned thereof.

41 This summons shall be signed and properly attested

42 as the act of such judge, sheriff or mayor, and may  
43 be varied to suit the circumstances of the case; and a  
44 copy of the same shall be immediately forwarded to the  
45 governor by the civil officer issuing the same. The offi-  
46 cer to whom the order of the governor or such summons  
47 is directed shall forthwith order the troops therein called  
48 for to parade at the time and place appointed; and shall  
49 immediately, by telegraph or most expeditious means, no-  
50 tify the governor and adjutant general of the receipt of  
51 such summons and also by letter through the usual mili-  
52 tary channels. Such troops shall appear at the time and  
53 place appointed, armed, equipped and with ammunition,  
54 and shall obey and execute such orders as they may then  
55 and there receive according to law. All orders from civil  
56 officers to military commanders must be in writing and  
57 attested by two witnesses; but such orders shall contain  
58 only the specific act to be performed by the military offi-  
59 cer. The manner of performing such act shall be left to  
60 the discretion of the military officer. Military command-  
61 ers shall transmit a copy of such orders at once through  
62 channels to the governor.

Sec. 31. *When Order by Civil Officers to Be in Writing;*  
2 *Compliance with Written Orders.*—Any officer whose  
3 command is called out under the provisions of this article,  
4 and reporting to any civil officer may require such civil  
5 officer to make such order in writing and prescribe there-  
6 in the outline of the duties required of him and his com-  
7 mand, and may decline to obey such orders until put in  
8 writing; and while such commanding officer must obey all  
9 lawful written orders of such civil officer, such military  
10 officer may use his discretion as to the manner of carrying  
11 out such orders, so long as he complies with their spirit.

Sec. 32. *Command to Assembly or Mob to Disperse.*—  
2 Before using any military force in the dispersion of any  
3 riot, rout, tumult, mob or unlawful assembly, or combi-  
4 nation mentioned in this article, it shall be the duty of  
5 the civil officer calling out such military force or some  
6 conservator of the peace, or if none be present, then of  
7 the officer in command of the troops, or some person by  
8 him deputed, to command the persons composing such

9 riotous, tumultuous or unlawful assembly or mob to dis-  
10 perse and retire peaceably to their respective abodes and  
11 business; but in no case shall it be necessary to use any  
12 set or particular form of words in ordering the dispersion  
13 of any riotous, tumultuous or unlawful assembly; nor  
14 shall any such command be necessary where the officer  
15 or person, in order to give it, would necessarily be put  
16 in imminent danger of loss of life or great bodily harm, or  
17 where such unlawful assembly or mob is engaged in the  
18 commission or perpetration of any forcible or atrocious  
19 felony, or in assaulting or attacking any civil officer or  
20 person lawfully called to aid in the preservation of the  
21 peace, or is otherwise engaged in actual violence to per-  
22 sons and property.

Sec. 33. *Penalty for Failure to Disperse.*—Any person  
2 or persons composing or taking part in any riot, rout,  
3 tumult, mob or lawless combination or assembly men-  
4 tioned in this article, who, after being duly commanded  
5 to disperse, as provided in the preceding section, wilfully  
6 and intentionally fails to do so as soon as practicable,  
7 shall be guilty of a felony, and, on conviction thereof,  
8 shall be imprisoned in the penitentiary for not less than  
9 one or more than two years.

Sec. 34. *Power of Officers.*—After any person or per-  
2 sons, composing or taking part, or about to take part, in  
3 any riot, mob, rout, tumult, or unlawful combination or  
4 assembly mentioned in this article shall have been duly  
5 commanded to disperse, or when the circumstances are  
6 such that no such command is requisite under the pro-  
7 visions of this article, and civil officer to whom such mili-  
8 tary force is ordered to report, or if there be no civil  
9 officer present, then such military officer (or if such  
10 command is acting under the direct order of the governor,  
11 then such officer within the limits provided in his instruc-  
12 tions) shall take such steps for the arrest, dispersion, or  
13 quelling of the persons composing or taking part in any  
14 such mob, riot, tumult, outbreak, or unlawful combina-  
15 tion or assembly mentioned in this article, as may be  
16 required, and if, in doing so, any person is killed, wounded,



17 or otherwise injured, or any property injured or de-  
18 stroyed, by the civil officer, or officer or member of the  
19 national guard, or other persons lawfully aiding them,  
20 such officer, member or person shall be held guiltless.

Sec. 35. *Assaults on National Guard or Persons Aiding*  
2 *Them; Penalty.*—It shall be unlawful for any person to  
3 assault, fire upon, or throw any missile at, against or  
4 upon any member or body of the national guard, or civil  
5 officer or other person lawfully aiding them, when going  
6 to, returning from, or assembled for performing any duty  
7 under the provisions of this article; and any person so  
8 offending shall be guilty of a felony, and, on conviction,  
9 shall be imprisoned in the penitentiary for not less than  
10 two nor more than five years.

Sec. 36. *Repelling Assault.*—If any portion of the na-  
2 tional guard, or any person lawfully aiding them in the  
3 performance of any duty, under the provisions of this  
4 article, is assaulted, attacked or in imminent danger there-  
5 of, the commanding officer of such national guard need  
6 not await any orders from any civil magistrate, but may  
7 at once proceed to quell such attack and disperse the at-  
8 tacking parties, and take all other needful steps for the  
9 safety of his command.

Sec. 37. *Failure to Retire from Unlawful Assembly;*  
2 *Penalty.*—Whenever any shot is fired or missile thrown  
3 at, against or upon any body of national guard, or upon  
4 any officer or member thereof, assembling or assembled  
5 for the performance of any duty under the provisions of  
6 this article, it shall forthwith be the duty of every person  
7 in the assembly from which such shot is fired, or missile  
8 thrown, to immediately disperse and retire therefrom,  
9 without awaiting any order to do so; and any person  
10 knowing or having reason to believe that a shot has been  
11 so fired, or missile thrown from any assembly of which  
12 such person forms a part or with which he is present, and  
13 failing without lawful excuse to retire immediately from  
14 such assembly, shall be guilty of a misdemeanor; and any  
15 person so remaining in such assembly, after being duly  
16 commanded to disperse, shall be guilty of a felony and

17 on conviction, shall be imprisoned in the penitentiary not  
18 less than one nor more than two years.

Sec. 38. *National Guard to Have Right of Way.*—Any  
2 portion of the national guard parading or performing any  
3 duty according to law shall have the right of way in any  
4 street or highway through which they may pass: *Pro-*  
5 *vided*, That the carriage of United States mails and opera-  
6 tion of fire engines and fire departments shall not be in-  
7 terfered with thereby.

Sec. 39. *Regulation of Occupancy of Streets for Passage*  
2 *of National Guard.*—Whenever any rout, riot, or mob has  
3 occurred or is progressing, or is so imminent that any  
4 portion of the national guard is or has been called out  
5 for the performance of any duty under the provisions of  
6 this article, it shall be lawful for the civil officer under  
7 whose orders the national guard is acting or the com-  
8 manding officer of such national guard, if it be deemed  
9 advisable in subduing or preventing such mob, or riot,  
10 or the outbreak thereof, to prohibit all persons from oc-  
11 cupying or passing on any street, road, or place, or where  
12 the national guard may be for the time being, and other-  
13 wise to regulate the passage and occupancy of such  
14 streets and places. Any person, after being duly informed  
15 of such regulations, who wilfully and intentionally, with-  
16 out any lawful excuse, attempts to go or remain on such  
17 street, road, or place, and fails to depart after being warned  
18 to do so, shall be guilty of a misdemeanor, and, on con-  
19 viction thereof, shall be fined not less than ten nor more  
20 than one hundred dollars, or imprisoned in the county  
21 jail not less than ten nor more than sixty days, or both;  
22 and in such case the officer in command of the national  
23 guard may forthwith arrest persons so offending and turn  
24 them over to some civil magistrate.

Sec. 40. *Transportation of Officers and Men.*—The sev-  
2 eral railroads and other transportation companies in this  
3 state shall furnish transportation for all officers and en-  
4 listed men in the national guard, together with the stores,  
5 ammunition and equipment, when traveling on duty un-  
6 der orders from competent authority, on request of the

7 officer desiring transportation, which request shall state  
8 the number of persons to be carried, and their destina-  
9 tion, and for such transportation said companies shall be  
10 entitled to receive compensation from the state at the  
11 rate specified.

Sec. 41. *Suits Against Officers or Persons Acting Under  
2 Military Authority; Security for Costs.*—When a suit or  
3 proceeding shall be commenced in any court by any per-  
4 son, against any military officer of the state, for any act  
5 done by such officer in his official capacity in the discharge  
6 of any duty under this article, or against any person act-  
7 ing under the authority or order of any such officer, or  
8 by virtue of any warrant issued by him pursuant to law,  
9 the court shall, upon motion of the defendant, when it  
10 has been made to appear to the court by affidavit, or  
11 otherwise, that the act done is such as hereinbefore set  
12 forth, require the person prosecuting or instituting the  
13 suit or proceeding to file security for the payment of  
14 costs that may be incurred by the defendant therein. This  
15 security shall be by bond payable to the state, with surety  
16 to be approved by the clerk of the court, in a penalty  
17 equal to six times the costs incurred and likely to be  
18 incurred by the defendant, but in no case shall such bond  
19 be for a penalty less than five hundred dollars. The court  
20 before whose clerk such bond is given, may, on motion  
21 by a defendant, give judgment for so much as he is en-  
22 titled to by virtue of such bond under the provisions of  
23 this section. If such security for costs be not given within  
24 sixty days from the time the same is required by the court  
25 to be given, the suit or proceedings shall, by order of the  
26 court, be dismissed. In case the plaintiff in any suit or  
27 proceeding shall be nonsuited, or shall have a verdict or  
28 judgment rendered against him, or in case any suit or  
29 proceeding shall be dismissed for failure to give security  
30 for costs, then the defendant shall recover three times  
31 the amount of the costs incurred by him. In all such cases  
32 as are referred to in this section the defendant may make  
33 a general denial and give the special matter in evidence.

Sec. 42. *Change of Venue of Prosecutions or Suits  
2 Against Members of National Guard.*—Any civil or mili-

3 tary officer or member of the national guard, or any per-  
4 son lawfully aiding them in the performance of any duty  
5 required under the provisions of this article, who is in-  
6 dicted or sued for any injury to person or property in en-  
7 deavoring to perform such duty, shall have the right, and  
8 it is hereby made the duty of the court in which such  
9 indictment or suit is pending, upon the application of any  
10 person so indicted or sued, to remove the trial of the in-  
11 dictment or suit to some county free from exception.

Sec. 43. *Pay and Allowances.*—The pay for officers and  
2 enlisted men of the West Virginia national guard for serv-  
3 ice at camps of instruction, rifle practice, practice marches  
4 and maneuvers, or other duties ordered by the president  
5 of the United States, shall be such as are provided in the  
6 national defense act and amendments thereto. Officers  
7 and enlisted men, when employed in the actual service  
8 of the state, as defined and provided in this article, be-  
9 ginning on the day they assemble at their armories or  
10 other designated places, until the day they have returned  
11 thereto and been properly relieved, inclusive, fractional  
12 parts of a day counting as a full day, shall receive pay and  
13 allowances at the rates which are currently applicable for  
14 federal service. Transportation for all military personnel,  
15 and subsistence for enlisted men, shall be provided by the  
16 state when the national guard is engaged in state duty.

Sec. 44. *Command Pay; Inspection; Compensation for*  
2 *Clerical Services and Care of Property.*—There shall be  
3 paid to each regimental commander one hundred dollars  
4 per month, and to each battalion commander fifty dollars  
5 per month, payable quarterly, to be known as command  
6 pay. The governor may, by order, direct such organiza-  
7 tion commanders to make certain inspections of the or-  
8 ganizations in their command, and file reports thereon,  
9 not exceeding four visits to each of such organizations  
10 in any one year, and for which such commanding officer  
11 shall receive no other compensation than that mentioned  
12 herein, but may be reimbursed his actual traveling ex-  
13 penses.

14 There shall be allowed to each regimental headquarters  
15 for clerical service the sum of one hundred and fifty dol-

16 lars per month; to each separate battalion or similar  
17 organization, not a part of a regiment or group within  
18 the state, the sum of fifty dollars per month for clerical  
19 service; and to each company, or corresponding unit, the  
20 sum of twenty dollars per month for like services, payable  
21 quarterly.

22 In the discretion of the adjutant general, there may be  
23 paid to the enlisted man who is directly responsible for  
24 the care and custody of the federal and state property of  
25 each organization or unit, the sum of ten dollars per  
26 month, payable quarterly, upon the certificate of his com-  
27 manding officer that he has faithfully and satisfactorily  
28 performed the duties assigned him and accounted for all  
29 property intrusted to his care.

Sec. 45. *Injury While in Service.*—A member of the  
2 national guard who shall, when on duty or assembled  
3 therefor, in case of riot, tumult, breach of the peace, in-  
4 surrection, or invasion, or whenever ordered by the gov-  
5 ernor, commanding officer of the national guard, or called  
6 in aid of the civil authorities by proper military order,  
7 receive an injury, or incur or contract any disability or  
8 disease, by reason of such duty or assembly therefor, or  
9 who shall without fault or neglect on his part be wound-  
10 ed or disabled while performing any lawfully ordered  
11 duty, which shall temporarily incapacitate him from pur-  
12 suing his usual business or occupation, shall, during the  
13 period of such incapacity, receive the pay provided by  
14 this article and actual necessary expenses for care and  
15 medical attendance. All claims arising under this sec-  
16 tion shall be inquired into by a board of three officers,  
17 at least one being a medical officer, to be appointed, upon  
18 the application of the member claiming to be so incapaci-  
19 tated, by the commanding officer of the organization or  
20 unit to which such member is attached or assigned. Such  
21 board shall have the same power to take evidence, ad-  
22 minister oaths, issue subpoenas and compel witnesses to  
23 attend and testify and produce books and papers, and  
24 punish their failure to do so, as is possessed by a general  
25 court-martial. The findings of the board shall be subject  
26 to the approval of the officer convening it, and also to the

27 approval of the governor, either of whom may return the  
28 proceedings of the board for revision and for the taking  
29 of further testimony. The amount found due such mem-  
30 ber by such board, to the extent that its findings are ap-  
31 proved by the reviewing officers thereof, shall be paid by  
32 the treasurer of the state out of any moneys in the mili-  
33 tary fund unexpended. The widow and children of every  
34 officer or soldier killed, while in the service of the state,  
35 shall be suitably provided for by the Legislature.

Sec. 46. *Military Fund.*—The sums of money which may  
2 be appropriated by the Legislature for carrying into effect  
3 any provisions of this article, and the fines and penalties  
4 required thereby to be paid to the treasurer of the state,  
5 shall constitute the military fund of the state for the uses  
6 and purposes set forth in this article. The state treasurer  
7 shall, at the end of each quarter, render to the adjutant  
8 general a statement of the condition of the military fund,  
9 showing the amount on hand at the beginning of the  
10 quarter, the amount received and expended during the  
11 quarter, and the balance on hand at the end of the quarter.  
12 The adjutant general shall furnish the governor a copy  
13 of this quarterly report, and if the sum appropriated by  
14 the Legislature for any year shall not be sufficient to pay  
15 for duty at the annual encampment for the number of  
16 days provided in this article, then either such encamp-  
17 ment shall not be held for that year, or held without pay,  
18 or held for less number of days than provided in this arti-  
19 cle, as the governor may determine, so that no deficiency  
20 shall be created by reason of the holding of such encamp-  
21 ment.

Sec. 47. *Military Expenses.*—All payments made under  
2 the provisions of this article, except for active service,  
3 shall be paid out of the military fund, and all expenses  
4 incurred in active service shall be paid out of any moneys  
5 in the treasury not otherwise appropriated. The military  
6 fund shall be disbursed on warrant of the adjutant gen-  
7 eral, properly drawn, and in such manner as the governor  
8 may order, or as may be required by law, but no warrant  
9 for funds signed by him shall be honored by the auditor

10 until such adjutant general shall have executed and filed  
11 such bond as may be required by the governor. Pay-  
12 ments shall be made on proper vouchers, which vouch-  
13 ers shall show the authority under which the expendi-  
14 tures are made, contain an itemized statement of the  
15 transaction, and be filed for record in the office of the  
16 adjutant general. All claims for services rendered or  
17 material furnished shall be approved by the officer order-  
18 ing the work or material, and shall be over his certificate  
19 to the effect that the amount is just and reasonable, and  
20 that it has not been previously paid. No expenditures  
21 shall be made by any officer until an estimate of the  
22 amount and a statement of the necessity therefor shall  
23 have been laid before the adjutant general and his ap-  
24 proval received.

Sec. 48. *Military Courts; Jurisdiction.*—Military courts  
2 of this state shall be: (a) General courts-martial; (b)  
3 special courts-martial; (c) summary courts-martial; (d)  
4 courts of inquiry; and shall have jurisdiction over any  
5 officer, warrant officer, or enlisted man of the West Vir-  
6 ginia national guard and other persons subject to military  
7 law for any crime made punishable by this article. The  
8 jurisdiction of the courts established by this article shall  
9 be presumed and the burden of proof shall rest with the  
10 person seeking to oust any such court of jurisdiction in  
11 any matter or proceeding.

Sec. 49. *Courts-Martial; General.*—Officers shall be tri-  
2 able only by general courts-martial and special courts-  
3 martial, and in no case, whether officer or enlisted man,  
4 shall a person be tried by persons inferior in rank or  
5 grade when it can feasibly be avoided. An enlisted man  
6 may request that at least one-third of a general or special  
7 court-martial total membership consist of enlisted men.

Sec. 50. *Appointment and Composition of Military*  
2 *Courts.*—(a) General courts-martial shall be appointed  
3 by the governor, and shall consist of not less than five  
4 members. (b) Special courts-martial may be appointed  
5 by the governor, or as provided in the manual for courts-  
6 martial, U. S. army, and shall consist of not less than

7 three members. (c) Summary courts-martial may be ap-  
8 pointed by the governor, or as provided in the manual  
9 for courts-martial, U. S. army, and shall consist of one  
10 officer. (d) Courts of inquiry may be appointed by the  
11 governor, or as provided in the manual for courts-martial,  
12 U. S. army, and shall consist of from one to three officers.

Sec. 51. *Forms; Practice; Procedure.*—The practice and  
2 procedure of courts-martial and courts of inquiry shall  
3 conform to the procedure of similar courts in the army  
4 of the United States, except as otherwise specially pro-  
5 vided herein. Such forms as are necessary for carrying  
6 into effect the provisions of this article shall be prescribed  
7 by the governor. The president of any military court au-  
8 thorized herein shall have authority to appoint and dis-  
9 miss required clerks and reporters and the compensation  
10 therefor shall be taxed as costs in such case. The clerk  
11 of a summary court shall receive a reasonable compensa-  
12 tion to be fixed by the court, not to exceed one dollar for  
13 each man tried.

Sec. 52. *Courts-Martial; Personnel.*—The senior in rank  
2 among the members present is the president and presiding  
3 officer of the court. The person ordering a general court-  
4 martial may appoint a judge advocate for the same.

Sec. 53. *Secrecy of Proceedings.*—The proceedings and  
2 sentence of a court-martial shall be kept secret until the  
3 same shall have been approved by proper authority. In  
4 any event, the vote and opinion of any member of a court  
5 shall be kept secret unless such is required to be revealed  
6 in a court of justice.

Sec. 54. *Powers of President; Witnesses; Oaths.*—The  
2 president of a court-martial shall have power to issue  
3 subpoenas for the arrest of accused persons and to bring  
4 them before the court for trial whenever such persons  
5 shall have disobeyed an order in writing from the con-  
6 vening authority to appear before such court, a copy of  
7 the charge or charges having been delivered to the ac-  
8 cused with such order, and to issue subpoenas and sub-  
9 poenas duces tecum and to enforce attendance of wit-



10 nesses and the production of books and papers and to  
11 sentence for a refusal to be sworn or to answer as pro-  
12 vided in actions before civil courts. All military courts  
13 shall have power to administer oaths as required by the  
14 manual for courts-martial, U. S. army.

Sec. 55. *Charges; Trial.*—When an officer or enlisted  
2 man is put under arrest for the purpose of trial, a copy  
3 of the charges and specifications upon which he is to be  
4 tried shall be delivered to him or left at his last known  
5 place of abode or business, within twenty days after ar-  
6 rest, and a court shall be ordered for his trial within  
7 thirty days after the notice of arrest is received by the  
8 officer authorized to order the court. He may be held in  
9 any jail or other place of detention or released upon his  
10 own recognizance or upon such bail as is deemed neces-  
11 sary by the circuit court of the county in which he is de-  
12 tained. If a copy of the charges and specifications be not  
13 served, or a court be not ordered within the time herein  
14 limited, then arrest shall cease; but such charges and  
15 specifications may be served, a court ordered and the  
16 officer or enlisted man brought to trial within twelve  
17 months after such release from arrest. The appearance  
18 of the accused, without objection, and pleading to the  
19 charges, shall be deemed a waiver of any defect or irreg-  
20 ularity of such service of any of the papers mentioned  
21 in this section. If an officer or enlisted man who has been  
22 ordered or duly summoned to appear before a military  
23 court for trial fail to appear, the court may enter a plea  
24 of not guilty for him and proceed to trial in his absence.

Sec. 56. *General Court-Martial; Offenses by Commis-*  
2 *sioned Officers; Penalties.*—Commissioned officers may be  
3 tried by a general court-martial for the following offenses:  
4 (a) For unmilitary or unofficer-like conduct;  
5 (b) For drunkenness on duty;  
6 (c) For neglect of duty;  
7 (d) For disobedience of orders or any act contrary to  
8 the provisions of this article, or to the provisions of the  
9 regulations for the government of the national guard;  
10 (e) For refusing to grant a discharge to an enlisted man  
11 when entitled to the same;

12 (f) For oppression or injury of any one under his com-  
13 mand;

14 (g) For a combination or attempt to break, resist or  
15 evade the laws or lawful orders, given to a person, or  
16 advising any person so to do;

17 (h) For insult to a superior officer;

18 (i) For presuming to exercise his command while under  
19 arrest or suspension;

20 (j) For neglect or refusal when commanding officer to  
21 order out the troops under his command when required  
22 by law or lawfully ordered by his superior officers;

23 (k) For neglect or refusal to make a draft or detach-  
24 ment when lawfully ordered to do so;

25 (l) For parading the troops under his command on days  
26 of election contrary to law;

27 (m) For receiving any fee or gratuity for any certifi-  
28 cate;

29 (n) For neglect, when detailed to drill or instruct a  
30 command, to make complaint for neglect or violation of  
31 duty as provided by law, or for any other neglect for  
32 which a commanding officer would be liable;

33 (o) For making a false certificate, account or muster  
34 or parade or property return;

35 (p) For conduct unbecoming an officer or a gentleman,  
36 or for conduct to the prejudice of good order and military  
37 discipline.

38 On conviction of any of the above-named offenses, offi-  
39 cers may be sentenced to be dismissed, and shall thereby  
40 become incapacitated from holding any military com-  
41 mission, may be fined to any amount not exceeding two  
42 hundred dollars, and in addition may be confined for a  
43 period not exceeding sixty days in the county jail of any  
44 county in the state, except, however, that the maximum  
45 penalties herein set forth shall not be regarded as affect-  
46 ing or limiting such penalties as may be imposed under  
47 other sections of this article. The order of the general  
48 court martial directed to the jailer of such jail shall be  
49 sufficient authority for said jailer to receive and confine  
50 said prisoner.

Sec. 57. *Special Court-Martial; Offenses by Commis-*

2 *sioned Officers; Penalties.*—Commissioned officers may be  
3 tried by a special court-martial for the same offenses list-  
4 ed under section fifty-six, except that upon conviction of  
5 any of the named offenses, officers may be fined to any  
6 amount not exceeding one hundred dollars, and in addi-  
7 tion may be confined for a period not exceeding thirty  
8 days in the county jail of any county in the state, except,  
9 however, that the maximum penalties herein set forth  
10 shall not be regarded as affecting or limiting such penalties  
11 as may be imposed under other sections of this article.  
12 The order of the special court-martial directed to the  
13 jailer of such jail shall be sufficient authority for said  
14 jailer to receive and confine said prisoner.

2 *Sec. 58. General Court-Martial; Offenses by Enlisted*  
3 *Men; Penalties.*—Enlisted men, in time of peace, may be  
4 tried by a general court-martial:

- 4 (a) For disobedience of orders;
- 5 (b) For disrespect to his superior;
- 6 (c) For mutiny;
- 7 (d) For desertion;
- 8 (e) For drunkenness on duty;
- 9 (f) For conduct prejudicial to good order and military  
10 discipline;
- 11 (g) For any act contrary to the military code, or to the  
12 provisions of the regulations for the government of the  
13 national guard.

14 On conviction, such enlisted man may be sentenced to  
15 be dishonorably discharged with loss of time served, rep-  
16 rimanded, reduced to the ranks, or may be fined not to  
17 exceed one hundred dollars, and in addition thereto may  
18 be confined in the county jail for a period of not exceed-  
19 ing sixty days in any county within the state, except,  
20 however, that the maximum penalties herein set forth  
21 shall not be regarded as affecting or limiting such penal-  
22 ties as may be imposed under other sections of this arti-  
23 cle. The order of the general court-martial directed to  
24 the jailer of such jail shall be sufficient authority to re-  
25 ceive and confine such prisoner in such jail.

*Sec. 59. Special Court-Martial; Summary Court-Mar-*

2 *tial; Offenses by Enlisted Men; Penalties.*—Enlisted men  
 3 may be tried by a special court-martial or a summary  
 4 court-martial for the same offenses listed under section  
 5 fifty-eight, except that on conviction by a special court-  
 6 martial such enlisted man may be reprimanded, reduced  
 7 to the ranks, or may be fined not to exceed fifty dollars,  
 8 and in addition thereto may be confined in the county jail  
 9 for a period of not exceeding thirty days in any county  
 10 in the state, except, however, that the maximum penalties  
 11 herein set forth shall not be regarded as affecting or limit-  
 12 ing such penalties as may be imposed under other sec-  
 13 tions of this article. In the case of a summary court-  
 14 martial, on conviction, such enlisted man may be reprimanded,  
 15 fined not to exceed twenty-five dollars, and in  
 16 addition thereto may be confined in the county jail for a  
 17 period of not exceeding fifteen days in any county in the  
 18 state, except, however, that the maximum penalties here-  
 19 in set forth shall not be regarded as affecting or limiting  
 20 such penalties as may be imposed under other sections of  
 21 this article. The order of the court-martial directed to  
 22 the jailer of such jail shall be sufficient authority for said  
 23 jailer to receive and confine said prisoner.

Sec. 60. *Form of Summons.*—The form of summons is-  
 2 sued by summary courts provided by this article shall be  
 3 substantially as follows, the blanks being properly filled  
 4 in:

#### SUMMONS

6 The State of West Virginia:  
 7 To....., who is hereby  
 8 designated and directed to serve this summons:  
 9 You are commanded to summon.....  
 10 to personally appear before the summary court for the  
 11 trial of himself, which will meet pursuant to the laws of  
 12 the State of West Virginia, at (address).....  
 13 (city)....., West Virginia, on the  
 14 .....day of....., 19....., at.....o'clock  
 15 ..... M., by virtue of..... Orders No.  
 16 ..... from headquarters.....  
 17 to answer delinquencies for offenses against.....  
 18 ..... (herein describe briefly the offense

19 charged) \_\_\_\_\_  
20 \_\_\_\_\_  
21 Given under my hand this the \_\_\_\_\_ day of \_\_\_\_\_  
22 19\_\_\_\_\_.  
23 (Signed) \_\_\_\_\_  
24 (Signature and rank of presiding officer)  
25 West Virginia National Guard  
26 President of the Court.

Sec. 61. *Service of Summons; Penalty for Failure.*—

2 The president of a court-martial shall designate and di-  
3 rect a fit person or persons to summon all delinquents  
4 to appear before the court. Service of the summons shall  
5 be made by the person so designated in the same manner  
6 as service or process in civil cases. The person serving  
7 the summons shall receive a fee of one dollar for such  
8 service, together with five cents per mile in necessary  
9 travel, and such fee of one dollar together with mileage,  
10 shall be taxed as a part of the costs in such proceeding.

11 The summons may be directed by the president of the  
12 court-martial to the sheriff, or his deputy, or any con-  
13 stable, or member of the department of public safety, or  
14 to any individual, in the county where such delinquent  
15 resides or may be found for service; and it shall be the  
16 duty of such person in whose custody the summons has  
17 been placed for service forthwith to serve same, if the  
18 delinquent be found, and make due return thereof,  
19 before the return day of such summons, to the president  
20 of the court-martial. The return of service of such sum-  
21 mons shall be in form and effect the same as is custom-  
22 arily used by officers in making returns in civil process.  
23 Any member of the department of public safety, sheriff,  
24 or his deputy, constable or individual, who shall refuse,  
25 fail or neglect to serve such summons and make his return  
26 thereon to the president of the court-martial before the  
27 return day thereof, shall be deemed guilty of a misde-  
28 meanor, and, on conviction thereof, shall be fined not to  
29 exceed fifty dollars.

Sec. 62. *Trial; Judgment; Duties of Sheriff; Penalty.*—

2 On the return day of the summons the court shall hear  
3 the evidence and render judgment thereon as the case

4 may be. If, however, on the return day of the summons  
5 the accused shall fail to appear, after having been duly  
6 served with such summons, the court shall proceed to hear  
7 the evidence and try the accused in his absence and render  
8 judgment thereon as the case may be and the facts war-  
9 rant. If such judgment be for a fine and costs solely, the  
10 court shall forthwith issue an execution in form and  
11 effect as hereafter set forth, and place it in the hands of  
12 the sheriff of the county wherein the accused may be  
13 found. If, however, the judgment of the court against  
14 the accused is for confinement in the county jail, the  
15 court shall forthwith issue an order directed to the sher-  
16 iff of the county wherein the accused may be found,  
17 directing said sheriff to take into custody the body of the  
18 accused and confine him in the county jail. Such order  
19 so delivered by the court shall be coextensive with the  
20 state, and shall be sufficient evidence and authority for  
21 the jailer of such county jail to receive the body of the  
22 accused and confine him therein pursuant to said judg-  
23 ment. No prescribed form of order for confinement of the  
24 accused shall be required.

25 Any sheriff who fails, neglects or refuses to perform  
26 any duty required of him by this section by reason of any  
27 order of confinement directed by any court, shall be guilty  
28 of a misdemeanor, and, upon conviction thereof, shall  
29 be fined not less than fifty nor more than one hundred  
30 dollars for each offense.

Sec. 63. *Form of Execution; Presumption of Jurisdic-*  
2 *tion of Military Courts.*—Execution for the purpose of  
3 either collecting the fine and costs of imprisoning the  
4 delinquent for failure to pay the same shall be substan-  
5 tially in the following form, blanks being properly filled  
6 in:

7 The State of West Virginia:  
8 To the Sheriff of ..... County, Greeting:  
9 Whereas, pursuant to the laws of the State of West  
10 Virginia, by an order duly issued by (name and rank of  
11 officer ordering court) .....  
12 of the West Virginia National Guard, and dated on the  
13 \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, a court was

14 duly appointed, for (state object of court) \_\_\_\_\_;  
15 and,

16 Whereas, the said court was duly and regularly con-  
17 vened and from time to time duly adjourned; and

18 Whereas, (name and rank of accused) \_\_\_\_\_  
19 \_\_\_\_\_ in (organization) \_\_\_\_\_

20 of the West Virginia National Guard, was duly and regu-  
21 larly returned to said court, as required by law, charged  
22 with (state whether accused was charged with delinquen-  
23 cies of offenses against the military code, without speci-  
24 fying character thereof) as appears by (either summons  
25 or charges and specifications, as the case may be) duly  
26 filed with said court, and was duly summoned and noti-  
27 fied to appear before said court; and it satisfactorily ap-  
28 pearing to the court that such \_\_\_\_\_

29 was and is a \_\_\_\_\_ of the West  
30 Virginia National Guard and subject to the jurisdiction  
31 of the court; and after due deliberation of the evidence  
32 offered by the state and the accused, the court did find and  
33 adjudge the said \_\_\_\_\_  
34 (state finding) \_\_\_\_\_  
35 and did sentence him to pay a fine of \_\_\_\_\_  
36 dollars, and did also sentence him to pay costs of \_\_\_\_\_  
37 \_\_\_\_\_ dollars, making a total fine of \_\_\_\_\_  
38 dollars; and,

39 Whereas, the proceedings, findings and sentences of  
40 such court were thereafter duly approved by \_\_\_\_\_  
41 \_\_\_\_\_, the officer ordering said court.

42 These are therefore in the name of the State of West  
43 Virginia to command you to levy and collect said fines,  
44 together with your costs, according to law, of the goods and  
45 chattels of \_\_\_\_\_, and in default of  
46 sufficient goods and chattels of such \_\_\_\_\_,  
47 to satisfy the same; then, within five days, to take the  
48 body of such delinquent to the common jail of \_\_\_\_\_  
49 county, and deliver him to the jailer thereof; and the  
50 said jailer is hereby directed and requested to receive  
51 the body of such \_\_\_\_\_ conveyed  
52 to the jail aforesaid, and to keep such \_\_\_\_\_  
53 closely confined in the manner and during the time re-  
54 quired by law, and until discharged according to law,

55 for which this shall be his warrant; and of your doings  
56 by virtue thereof to make return to me within forty  
57 days after the execution of these presents.

58 Given under my hand at \_\_\_\_\_, and  
59 State of West Virginia, on the \_\_\_\_ day of \_\_\_\_\_,  
60 19\_\_\_\_.

61 (Signed) \_\_\_\_\_  
62 (Rank and organization of presiding officer.)  
63 West Virginia National Guard,  
64 President of the court.

Sec. 64. *Courts of Inquiry.*—Courts of inquiry shall be  
2 ordered for the same purposes as provided in the manual  
3 for courts-martial, U. S. army, which are applicable to  
4 this state. Such courts of inquiry shall, without delay,  
5 report the evidence adduced, a statement of the facts,  
6 and, when required, an opinion thereof, to the appointing  
7 authority.

Sec. 65. *Disorderly Conduct Before Military Court;*  
2 *Penalty.*—Any person other than a member of the na-  
3 tional guard who shall resort to disorderly, contemptuous  
4 or insolent behavior in, or use any insulting or indecor-  
5 ous language or expressions to or before, any military  
6 court, or any member of either of such courts, in open  
7 court, to interrupt the proceedings or to impair the au-  
8 thority of such courts, shall be guilty of a misdemeanor  
9 and may be arrested by the order of the president of the  
10 court, and at once delivered to the civil authorities; and  
11 such person, if found guilty, shall be fined not less than  
12 five nor more than fifty dollars, or imprisoned in the  
13 county jail not exceeding thirty days, or both fined and  
14 imprisoned.

Sec. 66. *Record and Approval of Court-Martial Sent-*  
2 *ence.*—The record of the proceedings and sentence of  
3 every court-martial shall, without delay, be delivered to  
4 the appointing authority, who shall approve or disapprove  
5 thereof. A court may proceed with the execution of a  
6 sentence pending approval by the appointing authority.

Sec. 67. *Reconvening Court-Martial.*—A court-martial  
2 appointing authority is authorized to direct a court-mar-



3 tial to reconvene, and send back its proceedings for re-  
4 vision, and to remit, commute, or investigate any  
5 punishment awarded by the court.

Sec. 68. *Collection and Disposition of Fines.*—All fines  
2 under the provisions of this article not collectible by the  
3 court may be levied or collected by the sheriff of any  
4 county of the state, and shall be transmitted to the  
5 adjutant general of the state who shall deposit the same  
6 to the military fund of the state. Whenever process of  
7 law is necessary for collection of fines, the sheriff shall  
8 collect in addition thereto his usual fees.

Sec. 69. *Execution in Aid of Collection of Fines and*  
2 *Penalties.*—For the purpose of collecting any fines or pen-  
3 alties imposed by any courts-martial, the president of  
4 the court shall issue execution, or executions, for the  
5 collection thereof, and deliver the same to the sheriff of  
6 any county for levy on the goods and chattels of the de-  
7 linquent, and, in addition to such fine, shall collect the  
8 necessary costs of such proceedings, as provided in civil  
9 cases. On failure, within fifteen days from the time of de-  
10 livery of such execution into his hands, to satisfy such  
11 execution from the goods and chattels of the delinquent,  
12 the sheriff shall forthwith take the body of the delinquent  
13 to the county jail and therein confine him to serve the  
14 execution at the space and rate of one day's confinement  
15 for each two dollars of fine and the costs: *Provided,*  
16 *however,* That the delinquent may furnish a bond with  
17 good and sufficient surety to the sheriff to stay such  
18 execution and costs for a period of thirty days, either  
19 before confinement or during confinement; and if at the  
20 expiration of said thirty days such delinquent fails to  
21 pay the execution and costs, the sheriff may apprehend  
22 the delinquent and confine him in the county jail, as in  
23 the original proceeding; and if the accused be not found,  
24 the sureties on such bond shall be liable to the state of  
25 West Virginia for the amount of said execution and the  
26 costs thereof.

27 The sheriff shall be entitled to such commissions and  
28 fees as provided in civil cases.

Sec. 70. *Failure of Sheriff to Execute Process or Return*

2 *Fines.*—Any sheriff failing to execute any process, or to  
3 make proper return of all fines and penalties collected,  
4 shall be guilty of a misdemeanor, and, upon conviction  
5 thereof, be fined not less than fifty nor more than one  
6 hundred dollars for each offense.

Sec. 71. *Actions Against Members of Military Courts.*—  
2 No action shall be maintained against any member of a  
3 military court, or officer or agent acting under its au-  
4 thority, on account of the imposition of a fine or penalty  
5 or for the execution of a sentence on any person.

Sec. 72. *Trial by Civil Authorities.*—For any offense  
2 enumerated in this article which is also cognizable under  
3 civil law, the offender may, in the discretion of his su-  
4 perior officer, be delivered over to the civil authorities  
5 for such action and disposition as may be warranted.

Sec. 73. *Armory Board; How Constituted; Duties.*—The  
2 governor, the secretary of state and the auditor shall  
3 constitute the state armory board, whose duties it shall  
4 be to approve the selection of all armory sites and plans  
5 and specifications, to contract for the erection of all ar-  
6 mories, for the purchase of buildings suitable, or which  
7 can be made suitable, for armory purposes and the ac-  
8 quisition of armories already constructed, to audit and  
9 approve all bills, claims and accounts in connection with  
10 the construction or purchase of all armories before such  
11 bills, claims and accounts shall be paid, and to perform  
12 such other duties as this article may require, but without  
13 compensation except that their actual and necessary trav-  
14 eling expenses shall be paid; an allowance shall be made  
15 for the necessary clerical assistance, printing, stationery  
16 and postage, which shall be paid out of the fund appro-  
17 priated for the maintenance of the national guard.

Sec. 74. *Control of Armories; Acquisition of Sites; Ap-  
2 propriations and Expenditures Therefor; Consent to Ac-  
3 ceptance of Federal Funds.*—The state armory board  
4 shall have control of any arsenal, armory, or other quart-  
5 ers of the national guard, camp ground and rifle range  
6 owned by the state, and shall cause the same to be kept  
7 in good repair, and all money which may be appropriated

8 or otherwise made available for the purchase, erection,  
9 acquisition or repair of such buildings, grounds or ranges  
10 may be expended and shall be accounted for by the arm-  
11 ory board. The armory board may procure by purchase  
12 or condemnation sufficient ground for armories, arsenals,  
13 quarters, camp grounds or rifle ranges, when funds are  
14 available for the purpose, the title of same to be in the  
15 name of the state, and may, when the state shall be re-  
16 imbursed for its expenditures, transfer title of such  
17 grounds and rifle ranges to the United States, but may  
18 provide for the retention by the state of civil and police  
19 jurisdiction through such ranges and camp grounds and  
20 a right to tax persons residing thereon.

21 Authorization is hereby given to acceptance by the  
22 state armory board of any federal or other funds to  
23 assist or match state appropriations for the purposes of  
24 this article. Nothing herein contained shall be construed  
25 as limiting the authority of the adjutant general to enter  
26 into leases for armory, camp, and rifle range facilities on  
27 behalf of the national guard.

Sec. 75. *Control of New Armories; Rules and Regula-*  
2 *tions.*—Upon the completion of any new state-owned  
3 armory building or the purchase of any armory building  
4 property, the control and use of such armory shall vest in  
5 the armory board as provided in this article: *Provided,*  
6 *That the proceeds of rentals and other revenue derived*  
7 *from such armories may be devoted and applied by the*  
8 *armory board to the maintenance, extension, improve-*  
9 *ment and equipment thereof. The armory board may*  
10 *make and alter rules and regulations for the government*  
11 *of all officers and persons having charge of armories,*  
12 *arsenals, or other military property of this state.*

Sec. 76. *Municipal Aid for Armory Purposes; Issuance*  
2 *of Bonds.*—Any city or village, or two or more cities or  
3 villages jointly, in which an armory has heretofore been,  
4 is now, or may hereafter be, erected or authorized under  
5 the provisions of this article, may raise and appropriate  
6 money and funds in the aid of the construction, repair  
7 and improvement thereof, and to that end may issue  
8 bonds payable not more than thirty years after their

9 issue and bearing interest at a rate not exceeding six per  
10 cent per annum, and may deposit such money and funds  
11 and the proceeds of the sale of such bonds with the state  
12 treasurer to the credit of the proper construction fund,  
13 and may make such further provisions for the mainten-  
14 ance and improvements of such armory as may be deemed  
15 necessary: *Provided*, That whenever the board deems it  
16 expedient and in furtherance of the purposes of this ar-  
17 ticle, it may purchase and finish armories already built  
18 or partly built.

Sec. 77. *Funds for Armory Purposes.*—All moneys  
2 raised for the building of any armory shall be paid to the  
3 state treasurer, who shall keep separate account with  
4 each organization or unit which shall avail itself of the  
5 provisions of this article, and credit the same with the  
6 amount of money deposited by such organization, to-  
7 gether with the appropriation made under the provisions  
8 of this article; and all bills for the construction or pur-  
9 chase of armories shall, after being approved by such  
10 board, be paid out of said account or fund, and charged  
11 to the proper organization, upon the warrant of the  
12 state auditor, and the state auditor shall issue his war-  
13 rant upon such fund upon the certificate of the board.

14 All money returned and repaid to the state treasury  
15 from armory property sold, damaged or destroyed, or  
16 otherwise, shall be credited to a general armory fund,  
17 and may be expended for the building and construction  
18 or the purchase of armories for military organizations  
19 not having armory accommodations under the provisions  
20 and limitations of this article.

Sec. 78. *Disposition of Abandoned or Unsuitable Arm-*  
2 *ories.*—Whenever any such military organization which  
3 has availed itself of the provisions of this article, and  
4 has received the appropriation provided herein, shall  
5 be called or drafted into the federal service or shall be  
6 mustered out of the service of this state, and it shall  
7 appear probable that no new military organization will  
8 be organized in the city or village in which the armory  
9 is located, and there is no other military organization oc-  
10 cupying said armory, the adjutant general shall imme-

11 diately take possession of and close the same, and not  
12 permit its use for other than military purposes, but the  
13 armory board shall have the authority and it is hereby  
14 expressly empowered to sell, transfer and convey such  
15 property to the municipality or municipalities in which  
16 the same is located, for public purposes, upon the repay-  
17 ment to the state, for credit to the general armory fund,  
18 of the appropriation expended thereon, without interest:  
19 *Provided*, That if such municipality shall not purchase  
20 such property, the board shall then be authorized to sell,  
21 transfer and convey the same to any individual, firm or  
22 corporation, repaying to the state at least the full appro-  
23 priation expended therefor: *Provided further*, That if  
24 the armory cannot be sold in this manner, the armory  
25 board may lease it to the municipality for public pur-  
26 poses at an annual rental which shall not be less than  
27 ten per cent of the amount invested by the state in such  
28 armory: *And provided further*, That the armory board is  
29 hereby authorized and empowered to sell, transfer and  
30 convey on behalf of the state any state armory site or  
31 building which in the judgment of the board is unsuit-  
32 able for military purposes or which has been condemned  
33 by the state fire marshal. The moneys so received from  
34 the sale of such armories shall be paid into the state  
35 treasury and by the treasurer credited to the general  
36 armory fund.

Sec. 79. *Regulations While Military Forces on Duty.*—

2 When any portion of the military forces of this state  
3 shall be on duty, under or pursuant to the orders of the  
4 governor, or whenever any part of such forces shall be  
5 ordered to assemble for duty in time of war, insurrection,  
6 invasion, public danger, any breach of the peace, tumult,  
7 riot or resistance to process in this state, or imminent  
8 danger thereof, the rules and articles of war and the gen-  
9 eral regulations for the government of the army of the  
10 United States shall be considered in force and regarded  
11 as a part of this article until such forces shall be duly  
12 relieved from such duty. No punishment under such  
13 rules and articles which shall extend to the taking of  
14 life shall, in any case, be inflicted except in time of actual

15 war, invasion, or insurrection, declared by proclamation  
16 of the governor to exist, and then only after the approval  
17 of the governor of the sentence inflicting such punish-  
18 ment. In the event of invasion, insurrection, rebellion  
19 or riot, the governor may in his discretion declare a state  
20 of war in the towns, cities, districts or counties where  
21 such disturbances exist.

Sec. 80. *Governor to Make Rules and Regulations.*—

2 The governor is hereby authorized to make such rules  
3 and regulations, from time to time, as he may deem ex-  
4 pedit; but such rules and regulations shall conform to  
5 this article and as nearly as practicable to those govern-  
6 ing the United States army, and, when promulgated,  
7 shall have the same force and effect as the provisions of  
8 this article. But the rules and regulations now in force  
9 shall remain in force until new rules and regulations are  
10 approved and promulgated.

Sec. 81. *United States Army Regulations.*—All matters

2 relating to the organization, discipline and government of  
3 the national guard, not otherwise provided for in this  
4 article or in regulations, shall be decided by custom and  
5 usage of the United States army.

Sec. 82. *Leave of Absence for Public Officials and Em-*

2 *ployees.*—All officers and employees of the state, or sub-  
3 divisions or municipalities thereof, who shall be members  
4 of the national guard, shall be entitled to leave of absence  
5 from their respective offices or employments without loss  
6 of pay, status, or efficiency rating, on all days during  
7 which they shall be engaged in drills or parades during  
8 business hours ordered by proper authority, or for field  
9 training or active service for a maximum period of thirty  
10 days in any one calendar year ordered or authorized under  
11 the provisions of state law. The term "without loss of  
12 pay" shall mean that the officer or employee shall con-  
13 tinue to receive his normal salary or compensation, not-  
14 withstanding the fact that such officer or employee may  
15 have received other compensation from federal sources  
16 during the same period. Benefits of this section shall not  
17 accrue to individuals ordered or called to active duty by  
18 the president.

Sec. 83. *Contributing Members.*—In time of peace the  
2 officers commanding organizations and units may enlist  
3 contributing members not to exceed one hundred and fifty.  
4 Such members shall be subject to such contributions, dues  
5 and services as may be ordered by the respective organi-  
6 zations, but the dues of such members shall in no case  
7 be less than five dollars each, per annum, and the whole  
8 number of active and contributing members belonging to  
9 the active militia in any county shall not exceed five per  
10 centum of the voting population of such county.

Sec. 84. *General Penalty; Jurisdiction.*—A person con-  
2 victed of a crime declared by this article to be a mis-  
3 demeanor shall, unless otherwise provided, be punished  
4 by a fine of not more than five hundred dollars, or by im-  
5 prisonment in the county jail for not more than one year,  
6 or by both. Any circuit, intermediate, criminal court, or  
7 justice of the peace shall have jurisdiction over offenses  
8 enumerated in this article.

## CHAPTER 106

(House Bill No. 227—By Mr. File)

AN ACT to amend and reenact sections two and three, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as last amended by chapter sixty-four, acts of the Legislature, regular session, one thousand nine hundred forty-seven, relating to the appointment of an inspector, other commissioned officers, non-commissioned officers, troopers and civilian employees; and to the forming of companies or platoons, training of members of the department of public safety and other police officers and to salaries and bonds of members.

[Passed March 12, 1949; in effect July 1, 1949. Approved by the Governor.]

### Article 2. Department of Public Safety.

#### Section

2. Appointment of inspector, other commissioned officers, non-commissioned officers, troopers and civilian employees.

3. Companies and platoons and how constituted training of members and other peace officers; salaries and bonds of members.

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

That sections two and three, 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 2. *Appointment of Inspector, other Commissioned Officers, Non-commissioned Officers, Troopers and Civilian Employees.*—The superintendent shall appoint, from the enlisted membership of the department, an inspector with the rank of major who shall be next in authority to the superintendent, and for the purpose of operating and maintaining the executive offices, training school, scientific laboratory, keeping records relating to crimes, criminals and motor vehicle accidents, maintaining a system of supplies and accounting and carrying on other necessary services he shall appoint not more than two captains, one lieutenant, two master sergeants, two master technical sergeants, two technical sergeants, four sergeants, seven corporals and ten troopers. Technicians from the ranks of sergeant, corporal and trooper may be appointed and designated by the superintendent. He shall appoint such civilian employees as may be necessary whose salaries shall be fixed by the board of public works.

The inspector, captains, lieutenants, master sergeants, master technical sergeants, technical sergeants, sergeants and sergeant technicians, corporals and corporals technicians, troopers and trooper technicians shall be enrolled and enlisted as members of the department of public safety and shall be entitled to wear the insignia of rank as is provided by law or authorized by department regulations.

Section 3. *Companies and Platoons and How Constituted; Training of Members and Other Peace Officers; Salaries and Bonds of Members.*—The superintendent shall create, appoint and equip a department of public safety which shall, in addition to the personnel provided



6 for in section two of this article, consist of four com-  
7 panies or platoons. Each company or platoon shall be  
8 composed of one captain, one lieutenant, one first ser-  
9 geant, five sergeants, ten corporals and such number of  
10 troopers as the superintendent may decide best, but such  
11 number of troopers in any company or platoon shall not  
12 at any time be less than twenty-five nor more than sixty-  
13 five.

14 The superintendent shall provide adequate facilities  
15 for the training of all members of the department and  
16 shall prescribe a basic training course for newly en-  
17 listed members. He shall also provide advanced or in  
18 service training from time to time for all members of  
19 the department. The superintendent may, in his dis-  
20 cretion, hold training classes for other peace officers in  
21 the state without cost to such officers, except actual ex-  
22 penses for food, lodging and school supplies.

23 Members of the department shall receive salaries, as  
24 follows:

25 The inspector shall receive an annual salary of four  
26 thousand three hundred twenty dollars; captains shall  
27 receive an annual salary of three thousand five hundred  
28 forty dollars; lieutenants shall each receive an annual  
29 salary of three thousand two hundred forty dollars; the  
30 master sergeants, master technical sergeants and first  
31 sergeants shall each receive an annual salary of two  
32 thousand eight hundred eighty dollars; technical ser-  
33 geants shall each receive an annual salary of two thou-  
34 sand eight hundred twenty dollars; sergeants and ser-  
35 geant technicians shall each receive an annual salary  
36 of two thousand seven hundred dollars; corporals and  
37 corporal technicians shall each receive an annual salary  
38 of two thousand five hundred eighty dollars; and each  
39 newly enlisted trooper shall receive a salary of one  
40 hundred twenty-five dollars monthly during the period  
41 of his basic training and upon the satisfactory comple-  
42 tion of such training and assignment to active duty each  
43 such trooper shall receive, during the remainder of his  
44 first year's service, a salary of one hundred seventy-five  
45 dollars monthly. During the second year of his service  
46 in the department each trooper shall receive an annual

47 salary of two thousand two hundred twenty dollars;  
48 during the third year of his service each trooper shall  
49 receive an annual salary of two thousand three hundred  
50 forty dollars; and during the fourth year of his service  
51 and thereafter as long as he shall remain at the grade  
52 of trooper, each trooper shall receive an annual salary  
53 of two thousand four hundred sixty dollars.

54 In applying the foregoing salary schedule where salary  
55 increases are provided for continuous service, members  
56 of the department in service at the time this article be-  
57 comes effective shall be given credit for prior service  
58 and shall be paid such salaries as the same length of  
59 service will entitle them to receive under the provisions  
60 hereof.

61 Each members of the department of public safety,  
62 except the superintendent and civilian employees, shall,  
63 before entering upon the discharge of his duties, exe-  
64 cute a bond with security in the sum of three thousand  
65 five hundred dollars payable to the state of West Vir-  
66 ginia, conditioned for the faithful performance of his  
67 duties as such, and such bond shall be approved as to  
68 form by the attorney general, and as to sufficiency by  
69 the board of public works and the same shall be filed  
70 with the secretary of state and preserved in his office.



## CHAPTER 107

(Senate Bill No. 251—By Mr. Jackson, of Logan)

AN ACT authorizing the superintendent of the department of public safety, on behalf of the state, to sell certain lands originally acquired by the state for the use of such department but no longer needed therefor.

[Passed March 11, 1949; in effect from passage. Approved by the Governor.]

### Department of Public Safety.

#### Section

1. Superintendent authorized to sell certain lands in Logan county acquired for use of such department but no longer needed therefor.

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

Section 1. *Superintendent Authorized to Sell Certain Lands in Logan County Acquired for Use of Such Department but No Longer Needed Therefor.*—The superintendent of the department of public safety, on behalf of the state, is hereby authorized to sell at private sale, with the approval of the governor, two certain tracts of land originally acquired by the state for the use of such department but no longer needed therefor, to-wit: A tract of approximately nine acres conveyed to the state of West Virginia by Sadie Stone, widow, by a deed recorded in the office of the clerk of the county court of Logan county, in deed book number one hundred thirty, at page one hundred sixteen, and a tract of approximately three and a half acres, conveyed to the state of West Virginia by Elizabeth Smith, widow, by a deed recorded in the office of the clerk of the county court of Logan county, in deed book number one hundred thirty, at page one hundred eighteen, both tracts being located on the Guyandotte river below the town of Chapmanville, in Chapmanville district, Logan county, West Virginia. The proceeds from any such sale shall be paid into the state fund general revenue.

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## CHAPTER 108

(House Bill No. 380—By Mr. Kidd, by request)

AN ACT to amend and reenact sections one and three, article one; and section six, article six; chapter fifty, acts of the Legislature, one thousand nine hundred thirty-seven, as amended, and to amend article seven thereof by amending and reenacting sections four and five, and by adding a new section, to be designated section six, all relating to the regulation of motor carriers of persons or property for hire.

[Passed March 12, 1949; in effect July 1, 1949. Approved by the Governor.]

### Article

#### 1. Purposes, Definitions and Exemptions.

6. **Duties and Privileges of Motor Carriers Subject to Regulation of the Commission.**
7. **Complaints, Damages and Violations.**

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

That sections one and three, article one; and section six, article six; chapter fifty, acts of the Legislature, one thousand nine hundred thirty-seven, as amended, be amended and re-enacted, and that article seven thereof be amended by amending and reenacting sections four and five and by adding thereto a new section to be designated section six, all to read as follows:

**Article 1. Purposes, Definitions and Exemptions.**

**Section**

1. Purposes.
3. Exemptions.

Section 1. *Purposes.*—It is hereby declared to be the purpose and policy of the Legislature in enacting this law to confer upon the public service commission of West Virginia, in addition to all other powers conferred and duties imposed upon it by law, the power, authority, and duty to supervise and regulate the transportation of persons and property for hire by motor vehicles upon or over the public highways of this state so as to: (a) protect the safety and welfare of the traveling and shipping public in their use of transportation agencies by motor vehicle; (b) preserve, foster, and regulate transportation and permit the co-ordination of transportation facilities; (c) provide the traveling and shipping public transportation agencies rendering stabilized service at just and reasonable rates. This act shall apply to persons and motor vehicles engaged in interstate commerce to the extent permitted by the constitution and laws of the United States.

Sec. 3. *Exemptions.*—The provisions of this act, except where specifically otherwise provided, shall not apply to: (a) motor vehicles operated exclusively in the transportation of United States mail or in the transportation of newspapers; (b) motor vehicles owned and operated by the United States of America, the state of West Virginia, or any county, municipality, or county board of education,

8 or by and department thereof, and any motor vehicles  
9 operated under a contract with a county board of educa-  
10 tion exclusively for the transportation of children to and  
11 from school or such other legitimate transportation for  
12 the schools as the commission may specifically authorize;  
13 (c) motor vehicles owned and operated by farmers for  
14 the transportation, with or without compensation, of agri-  
15 cultural products produced on the farm owned or leased  
16 by such farmer, or on lands within a radius of eight air  
17 miles of such farm or lands, or the transportation of agri-  
18 cultural supplies to be used on such farm or lands, and  
19 in the transportation of such farmer, of fresh fruits, raw  
20 milk, or livestock, from point of production to markets  
21 or processing plants, packing houses, railroad stations and  
22 cold storage plants, and (d) motor vehicles used exclu-  
23 sively in the transportation of trash, rubbish, garbage, and  
24 human or animal excreta.

**Article 6. Duties and Privileges of Motor Carriers Subject to  
Regulation of the Commission.**

**Section**

6. Motor carrier fund; assessment; collection; appropriation.

Section 6. *Motor Carrier Fund; Assessment; Collection;*  
2 *Appropriation.*—In addition to the license fee, registration  
3 fees, or any other taxes required by law to be collected  
4 from motor carriers subject to this act, each such motor  
5 carrier shall be subject to, and shall pay to the public  
6 service commission, a special annual assessment for the  
7 purpose of paying the salaries, compensation, costs and  
8 expenses of administering and enforcing this act. All pro-  
9 ceeds or funds derived from such assessment shall be paid  
10 into the state treasury and credited to a special fund desig-  
11 nated public service commission motor carrier fund, to be  
12 appropriated as provided by law for the purpose herein  
13 stated. Each member of the commission shall receive a  
14 salary of fifteen hundred dollars per annum as compen-  
15 sation for the administration of this act in addition to  
16 all other salary or compensation otherwise provided by  
17 law, to be paid in monthly installments from said fund.  
18 The special assessment against each motor carrier shall be  
19 apportioned upon the number and capacity of motor ve-

20 hicles used by said carrier, computed as hereinafter pro-  
21 vided.

22 (a) For each identification card and plate..... \$ 1.00

23 (b) Upon each motor vehicle, except semi-  
24 trailers of such carriers of property, in accordance  
25 with its capacity as rated by its manufacturer, in  
26 addition to amount of subsection (a)

27 Of one ton or less capacity..... \$ 9.00

28 Of over one to one and one-half tons capacity..... \$13.50

29 Of over one and one-half tons to two tons capacity..... 18.00

30 Of over two tons to three tons capacity..... 22.50

31 Of over three tons to four tons capacity..... 27.00

32 Of over four tons to five tons capacity..... 31.50

33 Of over five tons to six tons capacity..... 36.00

34 Of over six tons to seven tons capacity..... 40.50

35 Of over seven tons to eight tons capacity..... 45.00

36 Of over eight tons to nine tons capacity..... 49.50

37 Of over nine tons to ten tons capacity..... 54.00

38 Of over ten tons capacity, \$54.00 plus \$4.50 for each  
39 additional ton of capacity in excess of ten tons.

40 (c) Upon each semi-trailer of such carriers of  
41 property, in accordance with its capacity as rated  
42 by its manufacturer, in an amount of two-thirds of  
43 the amount provided for vehicles of its capacity  
44 in subsection (b) of this section.

45 (d) Upon each motor vehicle of such carriers of  
46 passengers, in accordance with the seating capacity  
47 thereof, in addition to amount in subsection (a).

48 Of ten passengers or less..... \$13.50

49 Of eleven to twenty passengers, inclusive..... 22.50

50 Of twenty-one to thirty passengers, inclusive..... 31.50

51 Of thirty-one to forty passengers, inclusive..... 45.00

52 Of over forty passengers..... 54.00

53 (e) The annual assessment of each motor carrier shall  
54 be paid on or before the first day of July of each year.  
55 Additional assessments shall be collected upon the placing  
56 in use of any additional motor vehicle: *Provided*, That  
57 such additional assessment shall be subject to a reduction  
58 in the amounts shown in subsections (b), (c), and (d)  
59 corresponding to the unexpired quarterly periods of the

60 fiscal year, but shall not in any event be less than one-  
61 fourth of such amount plus the sum of one dollar pro-  
62 vided in subsection (a).

63 (f) Upon payment by any motor carrier of the assess-  
64 ment provided for, the public service commission shall  
65 advise the state road commission by notice in writing  
66 that such assessment has been paid, whereupon the state  
67 road commission may issue motor vehicle license for the  
68 vehicles described in said notice.

69 (g) Prior to the beginning of any fiscal year the public  
70 service commission, after taking into consideration any  
71 unexpended balance in the motor carrier fund, the prob-  
72 able receipts to be received in the ensuing fiscal year, and  
73 the probable costs of administering and enforcing the mo-  
74 tor carrier act for the ensuing fiscal year, may fix the  
75 assessment provided for in this section for the ensuing  
76 fiscal year in amounts which, in the commission's judg-  
77 ment, will produce sufficient revenue to administer and  
78 enforce the motor carrier act for said fiscal year: *Provided,*  
79 That in no event shall such assessment exceed the amounts  
80 set up in this section.

## Article 7. Complaints, Damages and Violations.

### Section

4. Penalty for violation of chapter; jurisdiction.
5. Second offense; penalty.
6. Duty of prosecuting attorneys and peace officers to enforce chap-  
ter; police powers of inspectors.

Section 4. *Penalty for Violation of Chapter; Jurisdic-*  
2 *tion.*—Every officer, agent, employee, or stockholder of  
3 any motor carrier, or any motor carrier, and every person  
4 who violates, procures, aids, or abets in the violation of  
5 any of the provisions of this act, or who fails to obey any  
6 order, decision, requirement, rule, or regulation of the  
7 commission or procures, aids, or abets any person in his  
8 failure to obey such order, decision, requirement, rule, or  
9 regulation, shall be deemed guilty of a misdemeanor and,  
10 upon conviction, shall be fined not exceeding one thou-  
11 sand dollars or confined in jail for not less than thirty  
12 days nor more than one year, or both, in the discretion  
13 of the court. Justices of the peace shall have concurrent  
14 jurisdiction with the circuit, criminal and intermediate

15 courts of proceedings to enforce the penalties prescribed  
16 by this section.

Sec. 5. *Second Offense; Penalty.*—When any person is  
2 convicted for a violation of any provision of this act or  
3 any order, decision, requirement, rule, or regulation of  
4 the commission and it is alleged in the indictment upon  
5 which he is convicted and it is admitted, or by jury found,  
6 that he has been before convicted of a violation of any  
7 provision of this act or order, decision, requirement, rule,  
8 or regulation of the commission, committed prior to the  
9 violation for which the indictment upon trial was found,  
10 then he shall be fined not less than five hundred dollars  
11 nor more than five thousand dollars and shall, in addition  
12 thereto, be confined in the county jail for not less than  
13 three months nor more than one year.

Sec. 6. *Duty of Prosecuting Attorneys and Peace Officers  
2 to Enforce Chapter; Police Powers of Inspectors.*—It shall  
3 be the duty of the department of public safety and the  
4 sheriffs of the counties in West Virginia to make arrests  
5 and the duty of the prosecuting attorneys of the several  
6 counties to prosecute all violations of this act, and the  
7 commission employees designated by it as inspectors shall  
8 have all the lawful powers of peace officers to enforce this  
9 act in any county or city of this state.

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## CHAPTER 109

(House Bill No. 221—By Mr. Davis and Mr. Powell, of Pleasants)

AN ACT to amend and reenact sections three and seventeen,  
article one, chapter thirty-seven of the code of West Vir-  
ginia, one thousand nine hundred thirty-one, relating to  
appointment of guardians ad litem; and answers of persons  
under disability; and validation of previous sales and action  
of courts; and to amend article one, chapter thirty-seven  
of the code of West Virginia, one thousand nine hundred  
thirty-one, as amended, by the addition of section eleven-a  
thereto, relating to the jurisdiction of courts to dispose of



in proceedings under article one, chapter thirty-seven, of matters which might otherwise be the subject of separate suits under section thirteen, article ten, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one.

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[Passed March 1, 1949; in effect ninety days from passage. Approved by the Governor.]

### **Article 1. Lands of Infants, Insane Persons, or Convicts, and Lands Held in Trust.**

#### **Section**

- 3. Guardian ad litem.
- 11-a. Suits under article, hearing and disposing thereof.
- 17. Validation of previous sales.

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

That sections three and seventeen, article one, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted; and article one, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by the addition of section eleven-a thereto, all to read as follows:

Section 3. *Guardian Ad Litem.*—To every such infant  
2 or insane or convict defendant there shall be appointed  
3 a guardian ad litem who shall answer on oath in proper  
4 person. The infant, if over fourteen years of age, or in-  
5 sane or convict defendant, may also answer on oath in  
6 person, or by his next friend or legal representative.

Sec. 11-a. *Suits Under Article, Hearing and Disposing*  
2 *Thereof.*—In any suit or proceeding under this article the  
3 court shall have jurisdiction to hear, decide and dispose  
4 of any matter which involves the property or welfare of  
5 any person under legal disability who may be a party to  
6 a suit or proceeding, which matter, but for this section,  
7 would otherwise be the subject of a separate suit, or suits,  
8 under section thirteen, article ten, chapter forty-four of  
9 this code. Rules of equity governing service of process  
10 generally shall apply to all proceedings under this article,

11 and section seven of this article shall not require the in-  
12 vestment of funds of any person under disability in those  
13 cases where such funds, as a result of the court's action,  
14 may not be available for such purpose.

Sec. 17. *Validation of Previous Sales.*—No sale of the  
2 real estate of an infant, convict, or insane person, here-  
3 tofore made and confirmed, under and by the judgment,  
4 order or decree of a court of competent jurisdiction, nor  
5 any conveyance of such real estate made or to be made  
6 under any such judgment, order, or decree, and no lease,  
7 mortgage, or trust deed upon the real estate of any such  
8 person, heretofore made under any such judgment, order  
9 or decree, shall in any manner be affected or invalidated  
10 by reason of the bill or petition in the case not having  
11 been verified, or by reason of the persons who would be  
12 the heirs or distributees of such infant, convict or insane  
13 person, if he were dead, not having been made parties to  
14 the suit or proceedings, or by reason of any other error  
15 or defect in the proceeding or deed, not affecting the very  
16 right of the case, or by reason of any action of the court  
17 in dealing with, in such suit or proceedings, matters which  
18 would otherwise have been the subject matter of a sep-  
19 arate suit under section thirteen, article ten, chapter  
20 forty-four of this code. All such sales and conveyances  
21 are hereby legalized and made valid; and all such leases,  
22 mortgages and deeds of trust, heretofore made, or to be  
23 made under any such judgment, order or decree in those  
24 cases where the welfare and property of the person under  
25 legal disability has been sufficiently protected are hereby  
26 legalized and made valid. Sales, leases, mortgages, or  
27 deeds of trust heretofore made pursuant to judgments,  
28 orders or decrees in suits or proceedings under this article  
29 shall not hereafter be invalidated for the reason that the  
30 court, in disposing of the case, failed to require such per-  
31 sons, property and estate to be burdened with the ex-  
32 pense of a separate suit or proceedings under section  
33 thirteen, of article ten, of chapter forty-four of this code,  
34 where it appears from the record that the court did  
35 adequately protect the welfare and property of the per-  
36 son under legal disability.

## CHAPTER 110

(House Bill No. 62—By Mr. Doring)

AN ACT to amend and reenact section seven, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as last amended and reenacted by chapter forty, acts of the Legislature, extraordinary session, one thousand nine hundred thirty-three, relating to salary and expenses of the state road commissioner.

[Passed March 12, 1949; in effect July 1, 1949. Approved by the Governor.]

### Article 2-a. State Road Commissioner.

#### Section

7. Salary and expenses.

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

That section seven, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended and reenacted by chapter forty, acts of the Legislature, extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section. 7. *Salary and Expenses.*—The commissioner  
2 shall receive a salary of eight thousand dollars per  
3 annum, and the necessary traveling expenses incident  
4 to the performance of his duties. Requisition for travel-  
5 ing expenses shall be accompanied by a sworn and  
6 itemized statement which shall be filed with the auditor  
7 and permanently preserved as a public record.

## CHAPTER 111

(House Bill No. 87—By Mr. McLaughlin, of Braxton)

AN ACT to amend and reenact section eight, article five-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one hundred forty, acts of the Legislature, regular session,

one thousand nine hundred forty-seven, relating to salary of the commissioner of the department of motor vehicles.

[Passed March 12, 1949; in effect July 1, 1949. Approved by the Governor.]

### **Article 5-a. Department of Motor Vehicles.**

#### **Section**

#### **8. Salary and expenses.**

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

That section eight, article five-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one hundred forty, acts of the Legislature, regular session, one thousand nine hundred forty-seven, be amended and reenacted to read as follows:

Section 8. *Salary and Expenses.*—The commissioner  
2 shall receive a salary of six thousand dollars and the  
3 necessary traveling expenses incident to the performance  
4 of his duties. Requisition for traveling expenses shall be  
5 accompanied by a sworn and itemized statement which  
6 shall be filed with the auditor and permanently preserved  
7 as a public record.

— 0 —

## **CHAPTER 112**

(Senate Bill No. 169—By Mr. Bean)

AN ACT to amend and reenact sections one, two and twenty-two, article six, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the licensing of motor vehicles.

[Passed March 11, 1949; in effect ninety days from passage. Approved by the Governor.]

### **Article 6. Licenses.**

#### **Section**

1. License for motor vehicle required; application.
2. Form of application; certificate of registration; plates; offenses; scope of section.
22. Government exemption from registration fee; exemption of ambulances and incorporated volunteer fire departments.

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

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

Section 1. *License for Motor Vehicle Required; Application.*—No motor vehicle shall be driven upon the public roads, or upon any road or street within any incorporated city, town or village within the state, until the owner shall first have obtained from the department of motor vehicles, as herein provided, a license or certificate of registration therefor. An applicant desiring such license or certificate may obtain the same by filing with the department, by mail or otherwise, a statement setting forth the character of the motor vehicle to be licensed, including the name of the manufacturer, the style, color of body, motor number, type and factory number of such vehicle, the character of the motive power, the name, age, residence and business address of the owner of such vehicle, and the name of the county in which he resides, and shall state whether such vehicle is or is not to be used in the public transportation of passengers or property, or both, for compensation, and, if so used or to be used, the applicants shall so certify, and shall, as a condition precedent to the securing of such license or certificate of registration, obtain a certificate of convenience, or permit from the public service commission.

Sec. 2. *Form of Application; Certificate of Registration; Plates; Offenses; Scope of Section.*—Every owner of one or more vehicles, not expressly exempted by this article, shall make a separate application in writing, properly verified for each vehicle, on a form provided by the commissioner of motor vehicles, for permission to operate the same on the public roads of this state. In the application for registration the applicant shall furnish such information as the commissioner shall require. Upon receipt of such application, together with the fees hereafter provided for, the commissioner shall file the application and give to the same a distinguishing mark and number, and shall issue to the owner of the vehicle a certificate of

14 registration, which shall contain the number or mark as-  
15 signed such vehicle, the name and place of residence  
16 of the owner and his post office address, if the same shall  
17 be different from his place of residence. Such certificate  
18 shall be of convenient size and form, and shall be at all  
19 times carried upon such vehicle, and shall be subject to  
20 examination upon demand by any proper officer, as herein  
21 provided. In addition to the certificate of registration, the  
22 commissioner shall, without additional charge, deliver to  
23 the owner metal plates bearing the abbreviation of the  
24 name of this state, the year for which issued, and the  
25 distinguishing mark or number assigned to such vehicle.  
26 Such plates shall be known as registration plates. Each  
27 year there shall be chosen a color, or combination of col-  
28 ors, for such registration plates, which shall be as dif-  
29 ferent as practical from the color, or colors, used on the  
30 plates of the preceding year, and the colors used for the  
31 current year of the bordering states, and the numerals  
32 and letters on such plates shall be of such color as to be  
33 shown in marked contrast to the remainder of the plate.  
34 The plates shall be of such size and character as the com-  
35 missioner of motor vehicles may prescribe so as to prop-  
36 erly accommodate the numerals and other marks. An  
37 automobile shall be required to carry two, and any other  
38 licensed motor vehicle one, of such plates.

39 Notwithstanding the provisions of this section, the com-  
40 missioner may, in his discretion, issue a type of license  
41 plate suitable for permanent use on motor vehicles, trail-  
42 ers, semi-trailers and motorcycles, together with appro-  
43 priate devices to be attached thereto to indicate the year  
44 for which such vehicles have been properly licensed. The  
45 design of such license plates shall be determined by the  
46 commissioner.

47 No motor vehicle shall be driven upon any of the high-  
48 ways of this state without the proper registration plates  
49 fastened thereon. Registration plates issued prior to the  
50 first of the licensing year for which they are to be effec-  
51 tive may be placed on the vehicle for which issued, not  
52 more than ten days prior to the first day of such licensing  
53 year, and used without additional registration fee: *Pro-*  
54 *vided*, That the commissioner of motor vehicles may ex-

55 tend the period during which said registration plates may  
56 be used as aforesaid for such time as in his judgment  
57 may seem best.

58 Any person, firm or corporation failing to carry the  
59 certificate of registration, or who drives a motor vehicle  
60 without the proper registration plates affixed thereto, or  
61 who changes the name, number or other identification in-  
62 formation on the certificate of registration, or registration  
63 plates, shall be deemed guilty of a misdemeanor, and, upon  
64 conviction, shall be fined not less than ten nor more than  
65 one hundred dollars: *Provided*, That in the case of a per-  
66 son to whom a certificate has been issued, but who at the  
67 time of arrest has not the same with him, the minimum  
68 fine shall be one dollar.

69 The provisions of this section shall apply both to the  
70 operator, or chauffeur, and to the owner who causes or  
71 knowingly permits his vehicle to be operated without a  
72 certificate of registration as herein provided.

Sec. 22. *Government Exemption from Registration*  
2 *Fee; Exemption of Ambulances and Incorporated Volun-*  
3 *teer Fire Departments.*—The United States government,  
4 the state, or any political subdivision thereof, shall be ex-  
5 empted from the payment of any fee on account of reg-  
6 istration of any vehicle owned or operated by the United  
7 States government, the state, or any political subdivision  
8 thereof, as the case may be: *Provided*, That the proper  
9 representative of the federal government, the state, or  
10 any such political subdivision thereof, shall make, or cause  
11 to be made, on the form provided for that purpose, an  
12 application for registration of such vehicle so owned and  
13 operated, and that the registration plate or plates issued  
14 for such vehicle shall be displayed or caused to be dis-  
15 played as provided in this article: *Provided further*, That  
16 fire apparatus owned by the United States government,  
17 the state, or any political subdivision thereof, and by an  
18 incorporated volunteer fire department organized for pro-  
19 tection of community property shall be exempt from all  
20 the provisions of this article except such provisions as re-  
21 lates to the qualification and licensing of drivers: *And*  
22 *provided further*, That any ambulance used exclusively

- 23 for charitable purposes, for which use there is no charge,  
24 shall be exempt from all the provisions of this article,  
25 except such provisions as relate to the qualifications and  
26 licensing of drivers.

## CHAPTER 113

(Senate Bill No. 258—By Mr. Bean)

AN ACT to amend and reenact section one, article seven, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certificates of title for motor vehicles and imposing a tax upon the certification of such titles.

[Passed March 12, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 7. Certificates of Title.

#### Section

1. Certificates of title; application; tax and fee.

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

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

- Section 1. *Certificates of Title; Application; Tax and Fee.*—Certificates of registration of any vehicle or registration plates therefor, whether original issues or duplicates, shall not be issued or furnished by the department of motor vehicles or any other officer charged with such duty, unless the applicant therefor already has received, or shall at the same time make application for and be granted, an official certificate of title of such motor vehicle. Such application shall be upon a blank form to be furnished by the department of motor vehicles and shall contain a full description of the motor vehicle, which description shall contain the manufacturer's number, the motor number and any distinguishing marks, together with a statement of the applicant's title and of any liens or encumbrances upon such motor vehicles, the names



16 and addresses of the holders of such liens and such other  
17 information as the department of motor vehicles may  
18 require. The application shall be signed and sworn to by  
19 the applicant. A tax is hereby imposed upon the privilege  
20 of effecting the certification of title of each motor vehicle  
21 in the amount equal to two per cent of the value of said  
22 motor vehicle at the time of such certification. If the motor  
23 vehicle is new, the actual purchase price or consideration  
24 to the purchaser thereof shall be the value of said vehicle;  
25 if the motor vehicle is a used or second-hand vehicle, the  
26 present market value at time of transfer or purchase shall  
27 be deemed the value thereof for the purpose of this section:  
28 *Provided*, That so much of the purchase price or consid-  
29 eration as is represented by the exchange of other motor  
30 vehicles on which the tax herein imposed has been paid by  
31 the vendor shall be deducted from the total actual price or  
32 consideration paid for said motor vehicle, whether the  
33 same be new or second-hand; if the motor vehicle be ac-  
34 quired through gift, or by any manner whatsoever, unless  
35 specifically exempted in this section, the present market  
36 value of motor vehicle at the time of the gift or transfer  
37 shall be deemed the value thereof for purposes of this sec-  
38 tion. No certificate of title for any motor vehicle shall be  
39 issued to any applicant unless such applicant shall have  
40 paid to the department of motor vehicles the tax imposed  
41 by this section which shall be two per cent of the true and  
42 actual value of the said motor vehicle whether the vehicle  
43 be acquired through purchase, by gift, or by any other  
44 manner whatsoever except gifts between husband and  
45 wife or between parents and children; but the tax imposed  
46 by this act shall not apply to motor vehicles to be register-  
47 ed under sections seventeen and eighteen, article six of this  
48 chapter, which are used or to be used in interstate com-  
49 merce, nor shall the tax imposed by this act apply to titling  
50 of motor vehicles by a registered dealer of this state for re-  
51 sale only. The total amount of revenue collected by reason  
52 of this tax shall be paid into the state road fund and ex-  
53 pended by the state road commissioner in the maintenance  
54 and construction of the state's secondary roads. In addi-  
55 tion to said tax, there shall be a charge of one dollar for  
56 each original certificate of title so issued.

57 The commissioner of motor vehicles, or other officer  
58 charged with such duty by the department of motor ve-  
59 hicles, if satisfied that the applicant is the owner of such  
60 motor vehicle, or otherwise entitled to have the same  
61 registered in his name, shall thereupon issue to the ap-  
62 plicant an appropriate certificate of title over the sig-  
63 nature of the official designated by the commissioner of  
64 motor vehicles, authenticated by a seal to be procured and  
65 used for such purpose. Such certificates shall be num-  
66 bered consecutively, beginning with number one, and  
67 shall contain such description and other evidence of iden-  
68 tification of such motor vehicle as the commissioner of  
69 motor vehicles, may deem proper.

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

74 If, by will or direct inheritance, a person becomes the  
75 owner of a motor vehicle upon which the tax herein im-  
76 posed has been paid, he shall not be required to pay such  
77 tax.

78 A person who has paid the tax imposed by this section  
79 shall not be required to pay the tax a second time for the  
80 same motor vehicle, but he shall be required to pay a  
81 charge of one dollar for the certificate of re-title of that  
82 motor vehicle.



## CHAPTER 114

(House Bill No. 242—By Mr. Blankenship)

AN ACT to amend and reenact section eleven, article eight, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, relating to the passing of school buses by other motor vehicles on public highways.

[Passed March 4, 1949; in effect from passage. Approved by the Governor.]

### Article 8. Traffic Regulations and Laws of the Road.

#### Section

11. Passing street cars and meeting, overtaking and passing school buses; penalty.

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

That section eleven, article eight, chapter seventeen of the code of West Virginia, as last amended, be amended and re-nacted to read as follows:

Section 11. *Passing Street Cars and Meeting, Over-taking and Passing School Buses; Penalty.*—Every person using, operating, or driving a motor vehicle upon or over any of the streets of any of the incorporated towns and cities thereof, shall bring the same to a full stop not less than five feet from any street car which has stopped to receive or discharge passengers and shall remain standing until such street car has taken on or discharged such passengers: *Provided, however,* That the operator may pass such street car where a safety zone is established by the proper authorities.

The driver of a vehicle upon a highway outside the limits of an incorporated town or city upon meeting or overtaking from either direction any school bus which has stopped on the highway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus and shall not proceed until such school bus resumes motion or until signalled by the driver to proceed.

Every bus used for the transportation of school children shall bear upon the front and rear thereof a plainly visible sign containing the words "school bus" in letters not less than six inches in height. When a contract school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school all markings thereon indicating "school bus" shall be covered or concealed.

Any person driving or operating a motor vehicle in violation of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten nor more than one hundred dollars, or imprisoned in the county jail for a period not to exceed six months, or both, at the discretion of the court or justice trying the case.

## CHAPTER 115

(House Bill No. 372—By Mr. Kidd)

AN ACT to amend and reenact section twenty-five, article eight, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the operation of a vehicle while under the influence of intoxicants, drugs or narcotics, and providing penalties for the violation thereof.

[Passed March 11, 1949; in effect from passage. Approved by the Governor.]

### Article 8. Traffic Regulations and Laws of the Road.

#### Section

25. Operating vehicle while intoxicated or under the influence of intoxicants, drugs or narcotics; penalties.

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

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

Section 25. *Operating Vehicle While Intoxicated or Under the Influence of Intoxicants, Drugs or Narcotics; Penalties.*—No person shall drive or operate any vehicle, motor driven or otherwise, upon any public road or street in this state, while intoxicated or under the influence of intoxicating liquor, drugs or narcotics; nor shall the owner of such vehicle, knowingly permit the same to be so operated by one intoxicated, or under the influence of intoxicating liquor, drugs or narcotics.

A person violating any provision of this section shall, for the first offense, be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine or not less than fifty nor more than one hundred dollars or by imprisonment in the county jail for a period of not less than five days nor more than six months, or by both such fine and imprisonment, and his operator's or chauffeur's license shall be revoked for a period of six months.

A person violating any provision of this section shall,

19 for the second offense, be guilty of a misdemeanor, and  
20 upon conviction thereof shall be punished by imprison-  
21 ment in the county jail for a period of not less than six  
22 months nor more than one year, which sentence shall not  
23 be subject to probation, and his operator's or chauffeur's  
24 license shall be revoked for a period of ten years, unless  
25 reissued by the department of motor vehicles, as herein-  
26 after provided. Whenever the commissioner of motor  
27 vehicles, after full investigation, shall find that the char-  
28 acter of any person who was convicted of a second offense  
29 under this section and the circumstances at the time  
30 indicate that he is not likely again to repeat his offense,  
31 and that the public good does not require that his license  
32 be longer revoked, the commissioner may if it is deemed  
33 advisable reissue such license at any time more than five  
34 years after the date on which it was revoked.

35 A person violating any provision of this section shall,  
36 for the third or any subsequent offense, be guilty of a  
37 felony, and upon conviction thereof shall be punished  
38 by imprisonment in the penitentiary for not less than  
39 one nor more than three years, and his operator's or  
40 chauffeur's license shall be revoked for a period of ten  
41 years and indefinitely thereafter unless reissued as here-  
42 inafter provided. Whenever the commissioner of motor  
43 vehicles, after full investigation, shall find that the char-  
44 acter of any person who was convicted of a third or sub-  
45 sequent offense under this section and the circumstances  
46 at the time indicate that he is not likely again to repeat  
47 his offense, and the public good does not require that  
48 his license be longer revoked, the commissioner may if  
49 it is deemed advisable reissue such license at any time  
50 more than ten years after the date on which it was re-  
51 voked.

52 The discretionary power herein conferred may be exer-  
53 cised by the commissioner and the department of motor  
54 vehicles with respect to the reissuing of licenses revoked  
55 because of convictions prior to the passage of this act.

## CHAPTER 116

(Senate Bill No. 136—By Mr. Jackson, of Lincoln)

AN ACT to repeal section seven, article sixteen, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact section six, article sixteen, chapter seventeen thereof, relating to the issuance of permits by the state road commission or the county court for openings in, or structures on, public roads.

[Passed March 12, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 16. Obstructions.

#### Section

6. Permit by commission or county court for openings in, or structures on, public roads.

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

That section seven, article sixteen, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that section six, article sixteen, chapter seventeen thereof be amended and reenacted to read as follows:

- Section 6. *Permit by Commission or County Court for*
- 2 *Openings in, or Structures on, Public Roads.*—No opening
  - 3 shall be made in any state or county-district road or high-
  - 4 way, nor shall any structure be placed therein or there-
  - 5 over, nor shall any structure, which has been so placed,
  - 6 be changed or removed, except in accordance with a per-
  - 7 mit from the state road commission or county court, as
  - 8 the case may be. No road or highway shall be dug up
  - 9 for laying or placing pipes, sewers, poles or wires, or for
  - 10 other purposes, and no trees shall be planted or removed
  - 11 or obstructions placed thereon, without the written per-
  - 12 mit of the commission or county court or its duly author-
  - 13 ized agent, and then only in accordance with the regula-
  - 14 tions of the commission or court. The work shall be done
  - 15 under the supervision and to the satisfaction of the com-
  - 16 mission or court; and the entire expense of replacing the

17 highway in as good condition as before shall be paid by  
18 the persons to whom the permit was given, or by whom  
19 the work was done: *Provided, however,* That nothing  
20 herein contained shall be so construed as to prevent any  
21 oil or gas company or person having a proper permit or  
22 franchise from transporting oil or gasoline along any of  
23 the public highways of this state, nor to give such com-  
24 pany a franchise without paying to the landowners  
25 through whose lands such road passes the usual and cus-  
26 tomary compensation paid or to be paid to the landowners  
27 for such right of way. Any grant or franchise when made  
28 shall be construed to give to such company or person only  
29 the right to use the easement in such public road.

30 A violation of any provision of this section shall be a  
31 misdemeanor, and the person or corporation violating the  
32 same shall, upon conviction thereof, be fined not less than  
33 twenty-five nor more than one hundred dollars for each  
34 offense.

## CHAPTER 117

(Senate Bill No. 116—By Mr. Amos and Mr. Jones)

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, relating to tolls to be charged for transit over bridges; the issuance of bonds on intrastate and interstate bridges; the purchase of existing bridges; disposition of tolls; declaring certain bridges a part of the state road system; and providing for the payment of bonds issued thereon.

[Passed March 7, 1949; in effect ninety days 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 seven-

teen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, 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



38 for the purchase of bonds for cancellation at a price not  
39 exceeding the market price and not exceeding the re-  
40 demption price, shall be applied to the redemption of  
41 bonds by lot at the redemption price then applicable.

42 Any bridge or bridges constructed under the provisions  
43 hereof and forming a connecting link between two or more  
44 state highways, or providing a river crossing for a state  
45 highway, are hereby adopted as a part of the state road  
46 system, but no such bridge or bridges shall be constructed  
47 without the approval in writing of the state road commis-  
48 sioner and the governor. If there be in the funds of the  
49 state sinking fund commission an amount insufficient to  
50 pay the interest and sinking fund on any bonds issued for  
51 the purpose of constructing such bridge or bridges, the  
52 state road commission is authorized and directed to allo-  
53 cate to said commission, from the state road fund, an  
54 amount sufficient to pay the interest on said bonds and/or  
55 the principal thereof, as either may become due and pay-  
56 able.

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## CHAPTER 118

(Senate Bill No. 111—By Mr. Bean)

AN ACT to amend and reenact section four, article nineteen, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the unauthorized operation of vehicle; unlawful taking, receiving or disposing of the same; penalty.

[Passed February 28, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 19. General Criminal Provisions.

#### Section

4. Unauthorized operation of vehicle; unlawful taking, receiving or disposing of the same; penalty.

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

That section four, article nineteen, chapter seventeen, of the

code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 4. *Unauthorized Operation of Vehicle; Unlawful Taking, Receiving or Disposing of the Same; Penalty.*—  
2    *ful Taking, Receiving or Disposing of the Same; Penalty.*—  
3    No person, other than the duly authorized agent, servant  
4    or employee of the owner thereof, shall take, without the  
5    knowledge and consent of the owner, and operate upon any  
6    public road or highway in this state, any automobile or  
7    other motor vehicle owned by another. Any person who,  
8    wilfully and without the knowledge or consent of the  
9    owner or person in lawful charge thereof, and with the  
10   intent to deprive such owner or person in lawful charge of  
11   the possession or use thereof, either temporarily or perma-  
12   nently, shall take possession of, enter and drive, or other-  
13   wise take away from any street, road, alley, public or pri-  
14   vate parking place, garage or other building or place,  
15   while the same is lawfully therein or thereon, any auto-  
16   mobile or other motor vehicle belonging to another or in  
17   his lawful possession; and any person or persons who shall  
18   assist, aid and abet, or be present for the purpose and with  
19   the intent to assist, aid or abet, another person or persons  
20   in such taking possession of, entering and driving or other-  
21   wise taking away any such automobile or other motor  
22   vehicle; and any person who shall receive, buy, conceal,  
23   or otherwise dispose of any such automobile or other mo-  
24   tor vehicle, knowing the same to have been stolen or taken  
25   without the knowledge or consent of the owner or  
26   person in lawful charge thereof, shall be deemed guilty of  
27   a felony, and upon conviction thereof, shall be fined not  
28   less than two hundred nor more than five thousand dol-  
29   lars, and confined in the penitentiary for not less than one  
30   nor more than five years. If a corporation or joint stock  
31   company, through or by any of its officers, members,  
32   agents, servants or employees, under the circumstances  
33   and with the knowledge defined in this section, shall re-  
34   ceive, buy, conceal or otherwise dispose of any such auto-  
35   mobile or other motor vehicle, such corporation or joint  
36   stock company shall, upon conviction thereof, be pun-  
37   ished with a fine of not less than two thousand nor more  
38   than ten thousand dollars.

## CHAPTER 119

(House Bill No. 344—By Mr. Tucker)

AN ACT to amend and reenact section ten, article twenty, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, relating to the cancellation of bond or return of insurance certificate filed as proof of ability to respond in damages, and requiring the commissioner of motor vehicles to give credit for the period of time for which a citizen of this state was under bond under the laws of other states.

[Passed March 12, 1949; in effect from passage. Approved by the Governor.]

### **Article 20. Protection Against Operation of Motor Vehicles; Financial Responsibility of Owners and Operators.**

#### **Section**

10. Cancellation of bond or return of insurance certificate.

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

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

- Section 10. *Cancellation of Bond or Return of Insurance Certificate.*—(a) The commissioner shall, upon the request in writing of the person on whose behalf such proof of ability to respond in damages was furnished, cancel any bond or return any certificate of insurance filed pursuant to this article as proof of ability to respond in damages, or waive the requirement of filing proof of ability to respond in damages in any of the following events:
- (1) At any time after three years shall have elapsed since the filing of such bond or certificate, if the person has not, during the three year period immediately preceding the request, been convicted of any offense referred to in section two of this article; or
  - (2) In the event of the death of the person on whose behalf such proof was filed, or the permanent incapacity of such person to operate a motor vehicle; or

18       (3) In the event the person who has given proof of  
19 ability to respond in damages surrenders his operator's  
20 or chauffeur's license, every certificate of registration  
21 and all registration plates to the commissioner: *Provided,*  
22 *however,* That in each of the foregoing instances such  
23 cancellation or return shall be upon the condition that  
24 no action for damages, upon a liability referred to in this  
25 article, is pending against such person on whose behalf  
26 such proof of ability to respond in damages was fur-  
27 nished, that no judgment upon any such liability against  
28 such person is outstanding and unsatisfied, and that no  
29 notice has been filed with the commissioner of an acci-  
30 dent involving such person, occurring within the three  
31 month period immediately preceding such request and  
32 resulting from the ownership, maintenance, use or oper-  
33 ation of a motor vehicle.

34       The affidavit of such person, showing fulfillment of  
35 the necessary requirements under this section, shall be  
36 sufficient proof thereof in the absence of evidence to  
37 the contrary in the records of the commissioner.

38       Whenever any person, as to whom such proof has  
39 been so cancelled or to whom such proof has been so  
40 returned, applies for an operator's or chauffeur's license  
41 or the registration of a motor vehicle within a period  
42 of three years from the date proof of ability to respond  
43 in damages was originally required, any such applica-  
44 tion shall be refused unless the applicant shall reestab-  
45 lish such proof for the remainder of such period: *Pro-*  
46 *vided, however,* That where any person has given bond  
47 as required by the laws of another state on a conviction  
48 which resulted in the loss of his driver's and/or chauf-  
49 feur's license, he shall be given credit for such period  
50 of time covered by the aforesaid bond on the period  
51 of three years as required by the laws of this state.

52       (b) The commissioner shall cancel any bond or return  
53 any certificate of insurance to the person entitled there-  
54 to, upon the substitution and acceptance of other ade-  
55 quate proof of ability to respond in damages pursuant  
56 to the provisions of this article.

## CHAPTER 120

(Senate Bill No. 231—By Mr. Winters)

AN ACT to amend article twenty-one, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section to be designated section one-a relating to penalties for operating a motor vehicle without an operator's license, chauffeur's license or learner's permit.

[Passed March 9, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 21. Licensing of Chauffeurs and Other Motor Vehicle Operators.

#### Section

1-a. Penalty for operating vehicle without being licensed therefor.

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

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

Section 1-a. *Penalty for Operating Vehicle Without Being Licensed Therefor.*—Any person who shall operate any motor vehicle in violation of section one of this article shall be guilty of a misdemeanor and upon conviction thereof shall, for the first offense, be punished by a fine of twenty-five dollars and for a second or subsequent offense shall be punished by a fine of fifty dollars and the suspension of privileges until proof of financial responsibility is established as provided for in article twenty of this chapter, but such proof shall be required for only a one-year period.

## CHAPTER 121

(Senate Bill No. 153—By Mr. Johnston, Mr. President)

AN ACT authorizing the issuance and sale of fifty million dollars of road bonds of the state of West Virginia to raise

money for the construction of secondary roads under and by virtue of the "fifty million dollar bond issue for roads amendment" to the constitution adopted at the general election held in November, one thousand nine hundred forty-eight, providing for the disposition, allocation and expenditure of the proceeds of the sale thereof, and providing for the levy and collection of an annual state tax and other revenue sufficient to pay semi-annually the interest on such bonds and the principal thereof within twenty-five years.

[Passed March 10, 1949; in effect July 1, 1949. Approved by the Governor.]

### Secondary Road Bonds.

#### Section

1. Road bonds; amount thereof and authority to issue.
2. Transfer, fee; registration, fee; where payable; interest rate; tax exempt.
3. Form of bond.
4. Form of coupon.
5. Listing by auditor.
6. State road sinking fund, sources; used to pay bonds and interest; investment of remainder.
7. Tax levy to pay, unless other funds available.
8. Sale by governor; minimum price.
9. Proceeds paid into state road fund; allocation among counties; expenditure.
10. Plates property of state.
11. Auditor to be custodian of unsold bonds.
12. Interim certificates.
13. Payment of expenses.

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

- Section 1. *Road Bonds; Amount Thereof and Authority to Issue.*—Bonds of the state of West Virginia of the par value of fifty million dollars are hereby authorized to be issued and sold for the purpose of raising funds for the building and construction, or for assisting in the building and construction, of a system of state secondary roads and highways provided for by the "fifty million dollar bond issue for roads amendment" to the constitution adopted at the general election held in November, one thousand nine hundred forty-eight. Such bonds may be issued by the governor in such amounts, not to exceed twenty-five million dollars in any one biennium, in coupon or registered form, in such denominations, at such times and

14 bearing such date or dates as the governor may determine,  
15 and shall become due and payable serially in equal  
16 amounts beginning one year and ending not more than  
17 twenty-five years from the date thereof.

Sec. 2. *Transfer, Fee; Registration, Fee; Where Payable; Interest Rate; Tax Exempt.*—The auditor and the  
2 treasurer are hereby authorized to arrange for the trans-  
3 fer of registered bonds, and for each such transfer a fee of  
4 fifty cents shall be charged by and paid to the state of  
5 West Virginia, to the credit of the state road sinking fund.  
6 Bonds taken in exchange shall be cancelled by the audi-  
7 tor and treasurer and be carefully preserved by the treas-  
8 urer. The treasurer shall make provisions for registering  
9 “payable to bearer” bonds, and for each bond registered  
10 a fee of fifty cents shall likewise be charged by and paid  
11 to the state of West Virginia, to the credit of the state road  
12 sinking fund. All of such bonds shall be payable at the  
13 office of the treasurer of the state of West Virginia, or, at  
14 the option of the holder, at some bank in the city of New  
15 York to be designated by the governor. The bonds shall  
16 bear interest at a rate not exceeding four and one-half  
17 per cent per annum, payable semi-annually, on the first  
18 day of ..... and the first day of ....., of each year,  
19 to bearer, at the office of the treasurer of the state of West  
20 Virginia, at the capitol of the state, or at the bank desig-  
21 nated by the governor, upon presentation and surrender  
22 of interest coupons then due, in the case of coupon bonds.  
23 In the case of registered bonds the treasurer of the state  
24 of West Virginia shall issue his check for the interest  
25 then due on the first day of ..... and the first day of  
26 ....., of each year, and mail it to the registered owner  
27 at his address as shown by the record of registration.  
28 Both the principal and interest of the bonds shall be pay-  
29 able in lawful money of the United States of America  
30 and the bonds shall be exempt from taxation by the state  
31 of West Virginia, or by any county, district, or municipi-  
32 lity thereof, which facts shall appear on the face of the  
33 bonds as part of the contract with the holder thereof.

Sec. 3. *Form of Bond.*—The bonds and coupons shall be  
2 engraved and the bonds shall be signed on behalf of

3 the state of West Virginia, by the treasurer thereof, under  
4 the great seal of the state, and countersigned by the  
5 auditor of the state, and shall be in the following form  
6 or to the following effect, as nearly as may be, namely:

7 COUPON ROAD BOND

8 (Or registered road bond, as the case may be)

9 OF THE

10 STATE OF WEST VIRGINIA

11 \$..... SERIES C No.....

12 The state of West Virginia, under and by virtue of  
13 authority of an act of the Legislature passed at the regu-  
14 lar session of one thousand nine hundred forty-nine, on  
15 the ..... day of ....., one  
16 thousand nine hundred forty-nine, and approved by the  
17 governor on the ..... day of .....,  
18 one thousand nine hundred forty-nine, which is hereby  
19 made a part hereof as fully as if set forth at length  
20 herein, acknowledges itself to be indebted to, and here-  
21 by promises to pay to the bearer hereof (in the case of  
22 a coupon bond) or to ..... or  
23 assigns (the owner of record, in case of registered bonds)  
24 on the ..... day of ....., 19....., in  
25 lawful money of the United States of America at the of-  
26 fice of the treasurer of the state of West Virginia at  
27 the capitol thereof, or at the option of the holder at  
28 ..... bank in the city of New  
29 York, the sum of ..... dollars,  
30 with interest thereon at ..... per centum per annum  
31 from date, payable semi-annually in like lawful money  
32 of the United States of America at the treasurer's office  
33 or bank aforesaid, on the first day of ..... and  
34 the first day of ..... of each year, (and in  
35 the case of coupon bonds) according to the tenor of the  
36 annexed coupons, bearing the engraved facsimile signa-  
37 ture of the treasurer of the state of West Virginia, upon  
38 surrender of such coupons. This bond (in the case of a  
39 coupon bond) may be exchanged for a registered bond  
40 of like tenor upon application to the treasurer of the state  
41 of West Virginia.

42 To secure the payment of this bond, principal sum and  
43 interest, when other funds and revenues sufficient are



45 the limits prescribed by the constitution, the board of  
44 not available for that purpose, it is agreed that, within  
46 public works of the state of West Virginia shall annually  
47 cause to be levied and collected an annual state tax on  
48 all property in the state, until this bond is fully paid,  
49 sufficient to pay the annual interest on this bond and the  
50 principal sum thereof within the time this bond becomes  
51 due and payable.

52 This bond is hereby made exempt from any taxation  
53 by the state of West Virginia, or by any county, district,  
54 or municipal corporation thereof.

55 In testimony whereof, witness the signature of the  
56 treasurer of the state of West Virginia, and the counter-  
57 signature of the auditor of the state, hereto affixed ac-  
58 cording to law, dated the \_\_\_\_\_ day of \_\_\_\_\_,  
59 one thousand nine hundred \_\_\_\_\_, and the seal of  
60 the state of West Virginia.

61 (Seal)

62

63 \_\_\_\_\_  
64 Treasurer of the State of West Virginia

65 Countersigned:

66

\_\_\_\_\_

67 Auditor of the State of West Virginia

Sec. 4. *Form of Coupon.*—The form of coupon shall be  
2 substantially as follows, to-wit:

3 STATE OF WEST VIRGINIA

4 Bond No. \_\_\_\_\_ Coupon No. \_\_\_\_\_

5 On the first day of \_\_\_\_\_, 19\_\_\_\_, the state  
6 of West Virginia will pay to the bearer, in lawful money  
7 of the United States of America, at the office of the  
8 treasurer of the state, or at the option of the holder at  
9 \_\_\_\_\_ bank in the city of New  
10 York, the sum of \_\_\_\_\_ dollars,  
11 the same being semi-annual interest on Road Bond No.  
12 \_\_\_\_\_, series C.

13

14 \_\_\_\_\_  
15 Treasurer of the State of West Virginia

16 The signature of the treasurer to such coupon shall be  
17 by his engraved facsimile signature and the coupons shall  
be numbered in the order of their maturity, from number

18 one consecutively. The bonds and coupons may be signed  
19 by the present treasurer and auditor, or by any of their  
20 respective successors in office, and bonds signed by the  
21 persons now in office may be sold by the governor or his  
22 successor in office without being signed by the successor  
23 in office of the present treasurer or auditor.

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

Sec. 6. *State Road Sinking Fund, Sources; Used to pay*  
2 *Bonds and Interest; Investment of Remainder.*—Into the  
3 state road sinking fund there shall be paid all moneys  
4 received from the annual state tax levy on the taxable  
5 property in the state levied under the provisions of this  
6 act, from any and all appropriations made by the state  
7 from other sources for the purpose of paying the interest  
8 on such bonds or paying off and retiring the bonds, from  
9 fines, forfeitures and penalties, if any, made applicable by  
10 law for the payment of such bonds or the interest thereon,  
11 from transfer fees as herein provided, and from any  
12 source whatsoever, which is made liable by law for the  
13 payment of the principal of such bonds or the interest  
14 thereon.

15 All such funds shall be kept by the treasurer in a sep-  
16 arate account, under the designation aforesaid, and all  
17 money belonging to the fund shall be deposited in the  
18 state treasury to the credit thereof.

19 Such fund shall be applied by the treasurer of the state,  
20 first to the payment of the semi-annual interest on such  
21 bonds as it shall become due as herein provided. The  
22 remainder of the fund shall be turned over by the state  
23 treasurer to the state sinking fund commission, whose  
24 duty it shall be to invest the same in bonds of the govern-  
25 ment of the United States, bonds of the state of West  
26 Virginia, or any political subdivision thereof: *Provided,*  
27 *however,* That bonds so purchased by the state sinking

28 fund commission shall mature so as to provide sufficient  
29 money to pay off all bonds herein provided to be issued  
30 as they may become due; and the money so paid into the  
31 state road sinking fund under the provisions of this act  
32 shall be expended for the purpose of paying the interest  
33 and principal of the bonds hereby provided for as they  
34 severally become due and payable and for no other pur-  
35 pose except that the fund may be invested until needed,  
36 as herein provided.

Sec. 7. *Tax Levy to Pay, Unless Other Funds Avail-*  
2 *able.*—In order to provide the revenue necessary for the  
3 payment of the principal and interest of such bonds, as  
4 hereinbefore provided, the board of public works, within  
5 the limits prescribed by the constitution, is authorized,  
6 empowered and directed to lay annually a tax upon  
7 all real and personal property subject to taxation  
8 within this state, sufficient to pay interest on the bonds  
9 accruing during the current year and one twenty-fifth  
10 of the total issue (at par value) of such bonds, for such  
11 number of years, not exceeding twenty-five, as may be  
12 necessary to pay the interest thereon and to pay off the  
13 principal sum of the bonds; and such taxes, when so col-  
14 lected, shall not be liable for or applicable to any other  
15 purpose: *Provided, however,* That if there be other funds  
16 in the state treasury, or in the state road funds, in any  
17 fiscal year, not otherwise appropriated, or if other sources  
18 of revenue be hereafter provided by law for the purpose,  
19 the board of public works is authorized, empowered and  
20 directed to set apart, in any year there be such funds, or  
21 other sources of revenue provided for such purpose, a sum  
22 sufficient to pay the interest on bonds accruing during  
23 the current year, and to pay off, and retire the principal  
24 of such bonds, or any part thereof, at maturity.  
25 The authority hereby vested in the board of public  
26 works shall be in addition to the authority now vested in  
27 it by present law.

Sec. 8. *Sale by Governor; Minimum Price.*—The gov-  
2 ernor shall sell the bonds herein mentioned at such time  
3 or times as he may determine necessary to provide funds  
4 for road construction as herein provided, upon recom-

5 mendment of the state road commission. All sales shall  
6 be at not less than par and accrued interest. All interest  
7 coupons becoming payable prior to the sale date shall be  
8 cancelled by the treasurer and rendered ineffective, be-  
9 fore the delivery of the bonds so sold.

Sec. 9. *Proceeds Paid Into State Road Fund; Allocation Among Counties; Expenditure.*—The proceeds of all  
2 sales of bonds herein authorized shall be paid into the  
3 state road fund, shall be distributed among the various  
4 counties in conformity with the method of allocation here-  
5 inafter provided, and shall be expended solely for the  
6 construction of secondary roads.

8 The state road commissioner shall allocate to the vari-  
9 ous counties the entire fifty million dollars to be raised by  
10 sale of the bonds herein authorized, as follows: There  
11 shall first be allocated to each county the sum of two hun-  
12 dred thousand dollars. Eighty per cent of the remainder  
13 shall then be allocated to the various counties on the  
14 basis of the ratio of the unimproved mileage of secondary  
15 roads in each county to the total unimproved mileage of  
16 secondary roads in the state: *Provided, however,* That no  
17 county shall receive under the initial allocations a sum  
18 in excess of one million one hundred thousand dollars.  
19 The amount still remaining shall from time to time be  
20 allocated by the commissioner to such of the counties  
21 and in such amounts as may in his opinion best serve the  
22 interests of the whole state by equalizing inequities re-  
23 sulting from the initial allocations and from varying costs  
24 of road construction under different topographical con-  
25 ditions.

Sec. 10. *Plates Property of State.*—The plates from  
2 which the bonds authorized by this act are engraved  
3 shall be the property of the state of West Virginia.

Sec. 11. *Auditor to Be Custodian of Unsold Bonds.*—  
2 The state auditor shall be the custodian of all unsold  
3 bonds issued pursuant to the provisions of this act.

Sec. 12. *Interim Certificates.*—The governor may au-  
2 thorize the issuance of interim certificates to be issued  
3 to the purchasers of such bonds to be held by them in

4 lieu of engraved bonds. When interim certificates are  
5 so issued, they shall become full and legal obligations of  
6 the state of West Virginia under all of the provisions  
7 of this act just as fully and completely as the engraved  
8 and permanent bonds.

Sec. 13. *Payment of Expenses.*—All necessary ex-  
2 penses incurred in the execution of this act shall be paid  
3 out of the state road fund on warrants of the auditor  
4 of the state drawn on the state treasury.

## CHAPTER 122

(Senate Bill No. 185—By Mr. Johnston, Mr. President)

AN ACT authorizing the issuance and sale of not exceeding ten million dollars of road bonds of the state of West Virginia to raise money for road construction and maintenance purposes under and by virtue of the "good roads amendment" to the constitution adopted at the general election held in November, one thousand nine hundred twenty; to provide for the distribution and expenditure of the proceeds of sale thereof, and to provide for the levy and collection of an annual state tax and other revenue sufficient to pay semi-annually the interest on such bonds and the principal thereof within twenty-five years.

[Passed February 28, 1949; in effect July 1, 1949. Approved by the Governor.]

### Road Bonds.

#### Section

1. Road bonds; amount; when may issue.
2. Transfer, fee; registration, fee; where payable; interest rate; tax exempt.
3. Form of bond.
4. Form of coupon.
5. Listing by auditor.
6. State road sinking fund, sources; used to pay bonds and interest; investment of remainder.
7. Tax levy to pay, unless other funds available.
8. Sale by governor; minimum price.
9. Proceeds paid into state road fund.
10. Plates property of state.
11. Auditor to be custodian of unsold bonds.
12. Interim certificates.
13. Payment of expenses.

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

*Section 1. Road Bonds; Amount; When May Issue.—*

2 Bonds of the state of West Virginia of the par value  
3 of ten million dollars are hereby authorized to be issued  
4 and sold for the purpose of raising funds for assisting in  
5 building, constructing and maintaining the system of  
6 roads and highways provided for by the constitution. Such  
7 bonds may be issued by the governor in such amounts, in  
8 coupon or registered form, in such denominations, at such  
9 times and bearing such date or dates as the governor may  
10 determine, and shall become due and payable serially in  
11 equal amounts beginning one year and ending twenty-five  
12 years from the date thereof: *Provided, however, That no*  
13 *bonds may be issued under the provisions of this act until*  
14 *bonds authorized and issued under the provisions of the*  
15 *"good roads amendment" to the constitution of the state,*  
16 *ratified at the general election held in November, one thou-*  
17 *sand nine hundred twenty, have been retired and can-*  
18 *celled out of the state road sinking fund created by sec-*  
19 *tion six, chapter one hundred thirteen, acts of the Legis-*  
20 *lature of West Virginia, one thousand nine hundred twen-*  
21 *ty-one, in an amount equal to or greater than the amount*  
22 *to be issued hereunder at any one time.*

*Sec. 2. Transfer, Fee; Registration, Fee; Where Pay-*

2 *able; Interest Rate; Tax Exempt.—*The auditor and the  
3 treasurer are hereby authorized to arrange for the trans-  
4 fer of registered bonds, and for each such transfer a fee of  
5 fifty cents shall be charged by and paid to the state of  
6 West Virginia, to the credit of the state road sinking fund.  
7 Bonds taken in exchange shall be cancelled by the auditor  
8 and treasurer and be carefully preserved by the treasurer.  
9 The treasurer shall make provisions for registering "pay-  
10 able to bearer" bonds, and for each bond registered a fee  
11 of fifty cents shall likewise be charged by and paid to the  
12 state of West Virginia, to the credit of the state road sink-  
13 ing fund. All of such bonds shall be payable at the office  
14 of the treasurer of the state of West Virginia, or, at the  
15 option of the holder, at some bank in the city of New York  
16 to be designated by the governor. The bonds shall bear  
17 interest at a rate not exceeding four and one-half per cent

18 per annum, payable semi-annually, on the first day of \_\_\_\_\_,  
19 and the first day of \_\_\_\_\_, of each year, to bearer, at the  
20 office of the treasurer of the state of West Virginia, at the  
21 capitol of the state, or at the bank designated by the gov-  
22 ernor, upon presentation and surrender of interest cou-  
23 pons then due, in the case of coupon bonds. In the case  
24 of registered bonds the treasurer of the state of West Vir-  
25 ginia shall issue his check for the interest then due on the  
26 first day of \_\_\_\_\_ and \_\_\_\_\_ of each year, and mail  
27 it to the registered owner at his address as shown by the  
28 record of registration. Both the principal and interest of  
29 the bonds shall be payable in lawful money of the United  
30 States of America and the bonds shall be exempt from  
31 taxation by the state of West Virginia, or by any county,  
32 district, or municipality thereof, which facts shall appear  
33 on the face of the bonds as part of the contract with the  
34 holder thereof.

Sec. 3. *Form of Bond.*—The bonds and coupons shall be  
2 engraved and the bonds shall be signed on behalf of the  
3 state of West Virginia, by the treasurer thereof, under the  
4 great seal of the state, and countersigned by the auditor  
5 of the state, and shall be in the following form or to the  
6 following effect, as nearly as may be, namely:

7 COUPON ROAD BOND

8 (Or registered road bond, as the case may be)

9 OF THE

10 STATE OF WEST VIRGINIA

11 \$ \_\_\_\_\_ No. \_\_\_\_\_

12 The state of West Virginia, under and by virtue of  
13 authority of an act of the Legislature passed at the regu-  
14 lar session of one thousand nine hundred forty-nine, on  
15 the \_\_\_\_\_ day of \_\_\_\_\_, one thousand  
16 nine hundred forty-nine, and approved by the governor  
17 on the \_\_\_\_\_ day of \_\_\_\_\_, one thou-  
18 sand nine hundred forty-nine, which is hereby made a  
19 part hereof as fully as if set forth at length herein, ac-  
20 knowledges itself to be indebted to, and hereby promises  
21 to pay to the bearer hereof (in the case of a coupon bond)  
22 or to \_\_\_\_\_ or assigns (the owner of record, in  
23 case of registered bonds) on the \_\_\_\_\_ day of \_\_\_\_\_,

24 19\_\_\_\_, in lawful money of the United States of America  
25 at the office of the treasurer of the state of West Virginia  
26 at the capitol of said state, or at the option of the holder  
27 at\_\_\_\_\_bank in the city of New York, the sum of \_\_\_\_\_  
28 dollars, with interest thereon at \_\_\_\_\_ per centum per an-  
29 num from date, payable semi-annually in like lawful  
30 money of the United States of America at the treasurer's  
31 office or bank aforesaid, on the first day of\_\_\_\_\_and the  
32 first day of\_\_\_\_\_of each year, (and in the case of coupon  
33 bonds) according to the tenor of the annexed coupons,  
34 bearing the engraved facsimile signature of the treasurer  
35 of the state of West Virginia, upon surrender of such  
36 coupons. This bond (in case of a coupon bond) may be  
37 exchanged for a registered bond of like tenor upon ap-  
38 plication to the treasurer of the state of West Virginia.

39 To secure the payment of this bond, principal sum and  
40 interest, when other funds and revenues sufficient are not  
41 available for that purpose, it is agreed that, within the  
42 limits prescribed by the constitution, the board of public  
43 works of the state of West Virginia shall annually cause  
44 to be levied and collected an annual state tax on all prop-  
45 erty in the state, until this bond is fully paid, sufficient  
46 to pay the annual interest on this bond and the principal  
47 sum thereof within the time this bond becomes due and  
48 payable.

49 This bond is hereby made exempt from any taxation  
50 by the state of West Virginia, or by any county, district,  
51 or municipal corporation thereof.

52 In testimony whereof, witness the signature of the  
53 treasurer of the state of West Virginia, and the counter-  
54 signature of the auditor of the state, hereto affixed ac-  
55 cording to law, dated the \_\_\_\_\_ day of \_\_\_\_\_,  
56 one thousand nine hundred \_\_\_\_\_, and the seal of  
57 the state of West Virginia.

58 (Seal)

59

60 \_\_\_\_\_  
Treasurer of the State of West Virginia

61 Countersigned:

62

63 \_\_\_\_\_  
Auditor of the State of West Virginia



2       Sec. 4. *Form of Coupon.*—The form of coupon shall be  
substantially as follows, to-wit:

3                       STATE OF WEST VIRGINIA

4   Bond No. \_\_\_\_\_ Coupon No. \_\_\_\_\_

5       On the first day of \_\_\_\_\_, 19\_\_\_\_, the state of  
6   West Virginia will pay to the bearer, in lawful money of  
7   the United States of America, at the office of the treasurer  
8   of the state, or at the option of the holder at \_\_\_\_\_  
9   \_\_\_\_\_ bank in the city of New York, the sum of  
10  \_\_\_\_\_ dollars, the same being semi-annual  
11 interest on Road Bond No. \_\_\_\_\_.

12  
13                       Treasurer of the State of West Virginia

14       The signature of the treasurer to such coupon shall be  
15 by his engraved facsimile signature and the coupon shall  
16 be numbered in the order of their maturity, from number  
17 one consecutively. The bonds and coupons may be signed  
18 by the present treasurer and auditor, or by any of their  
19 respective successors in office, and bonds signed by the  
20 persons now in office may be sold by the governor or his  
21 successor in office without being signed by the successor  
22 in office of the present treasurer or auditor.

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

      Sec. 6. *State Road Sinking Fund, Sources; Used to Pay*  
2 *Bonds and Interest; Investment of Remainder.*—Into the  
3 state road sinking fund there shall be paid all moneys  
4 received from the annual state tax levy on the taxable  
5 property in the state levied under the provisions of this  
6 act, from any and all appropriations made by the state  
7 from other sources for the purpose of paying the interest  
8 on such bonds or paying off and retiring the bonds, from  
9 fines, forfeitures and penalties, if any, made applicable  
10 by law for the payment of such bonds or the interest  
11 thereon, from transfer fees as herein provided, and from

12 any source whatsoever, which is made liable by law for  
13 the payment of the principal of such bonds or the interest  
14 thereon.

15 All such funds shall be kept by the treasurer in a sepa-  
16 rate account, under the designation aforesaid, and all  
17 money belonging to the fund shall be deposited in the  
18 state treasury to the credit thereof.

19 Such fund shall be applied by the treasurer of the state,  
20 first to the payment of the semi-annual interest on such  
21 bonds as it shall become due as herein provided. The  
22 remainder of the fund shall be turned over by the state  
23 treasurer to the state sinking fund commission, whose  
24 duty it shall be to invest the same in bonds of the govern-  
25 ment of the United States, bonds of the State of West  
26 Virginia, or any political subdivision thereof: *Provided*.  
27 *however*, That bonds so purchased by the state sinking  
28 fund commission shall mature so as to provide sufficient  
29 money to pay off all bonds herein provided to be issued  
30 as they may become due; and the money so paid into  
31 the state road sinking fund under the provisions of this  
32 act shall be expended for the purpose of paying the inter-  
33 est and principal of the bonds hereby provided for as  
34 they severally become due and payable and for no other  
35 purpose except that the fund may be invested until  
36 needed, as herein provided.

Sec. 7. *Tax Levy to Pay, Unless Other Funds Avail-*  
2 *able.*—In order to provide the revenue necessary for the  
3 payment of the principal and interest of such bonds, as  
4 hereinbefore provided, the board of public works, within  
5 the limits prescribed by the constitution, is authorized,  
6 empowered and directed to lay annually a tax upon all  
7 real and personal property subject to taxation within  
8 this state, sufficient to pay interest on the bonds accruing  
9 during the current year and one twenty-fifth of the total  
10 issue (at par value) of such bonds, for such number of  
11 years, not exceeding twenty-five, as may be necessary  
12 to pay the interest thereon and to pay off the principal  
13 sum of the bonds; and such taxes, when so collected,  
14 shall not be liable for or applicable to any other purpose:  
15 *Provided, however*, That if there be other funds in the

16 state treasury, or in the state road funds, in any fiscal  
17 year, not otherwise appropriated, or if other sources of  
18 revenue be hereafter provided by law for the purpose,  
19 the board of public works is authorized, empowered and  
20 directed to set apart, in any year there be such funds,  
21 or other sources of revenue provided for such purpose,  
22 a sum sufficient to pay the interest on bonds accruing  
23 during the current year, and to pay off, and retire the  
24 principal of such bonds, or any part thereof, at maturity.  
25 The authority hereby vested in the board of public  
26 works shall be in addition to the authority now vested in  
27 it by present law.

Sec. 8. *Sale by Governor; Minimum Price.*—The gover-  
2 nor shall sell the bonds herein mentioned at such time or  
3 times as he may determine necessary to provide funds for  
4 road construction and maintenance purposes, as herein  
5 provided, upon recommendation of the state road com-  
6 mission. All sales shall be at not less than par and  
7 accrued interest. All interest coupons becoming payable  
8 prior to the sale date shall be cancelled by the treasurer  
9 and rendered ineffective, before the delivery of the bonds  
10 so sold.

Sec. 9. *Proceeds Paid Into State Road Fund.*—The pro-  
2 ceeds of all sales of bonds herein authorized shall be paid  
3 into the state road fund created by section one, article  
4 three, chapter seventeen of the code, one thousand nine  
5 hundred thirty-one, as last amended.

Sec. 10. *Plates Property of State.*—The plates from  
2 which the bonds authorized by this act are engraved  
3 shall be the property of the state of West Virginia.

Sec. 11. *Auditor to Be Custodian of Unsold Bonds.*—  
2 The state auditor shall be the custodian of all unsold bonds  
3 issued pursuant to the provisions of this act.

Sec. 12. *Interim Certificates.*—The governor may au-  
2 thorize the issuance of interim certificates to be issued to  
3 the purchasers of such bonds to be held by them in lieu  
4 of engraved bonds. When interim certificates are so is-  
5 sued, they shall become full and legal obligations of the

- 6 state of West Virginia under all of the provisions of this  
7 act just as fully and completely as the engraved and per-  
8 manent bonds.

- Sec. 13. *Payment of Expenses.*—All necessary expenses  
2 incurred in the execution of this act shall be paid out of  
3 the state road fund on warrants of the auditor of the state  
4 drawn on the state treasurer.

## CHAPTER 123

(Senate Bill No. 250—By Mr. Johnston, Mr. President)

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article seven, providing for the coverage of officers and employees of the state and local governments under the old-age and survivors insurance provisions of title II of the federal social security act.

[Passed March 10, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 7. Social Security Agency.

#### Section

1. Declaration of policy.
2. Definitions.
3. Federal-state agreement; interstate agreements.
4. Contributions by state employees.
5. Plans for coverage of employees of political subdivisions and of state and local instrumentalities.
6. Contribution fund.
7. Rules and regulations.
8. Studies and reports.
9. Separability.
10. Repeal.

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

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

Section 1. *Declaration of Policy.*—In order to extend  
2 to employees of the state and its political subdivisions and  
3 of the instrumentalities of either, and to the dependents  
4 and survivors of such employees, the basic protection ac-  
5 corded to others by the old-age and survivors insurance  
6 system embodied in the social security act, it is hereby  
7 declared to be the policy of the Legislature, subject to the  
8 limitation of this act, that such steps be taken as to pro-  
9 vide such protection to employees of the state and local  
10 governments on as broad a basis as is permitted under ap-  
11 plicable federal law.

Sec. 2. *Definitions.*—For the purposes of this act:

2 (a) The term “wages” means all remuneration for em-  
3 ployment as defined herein, including the cash value of  
4 all remuneration paid in any medium other than cash,  
5 except that such term shall not include that part of such  
6 remuneration which, even if it were paid for “employ-  
7 ment” within the meaning of the federal insurance con-  
8 tributions act, would not constitute “wages” within the  
9 meaning of that act.

10 (b) The term “employment” means any service per-  
11 formed by an employee in the employ of the state, or any  
12 political subdivision thereof, or any instrumentality of  
13 either, for such employer, except service which in the ab-  
14 sence of an agreement entered into under this act would  
15 constitute “employment” as defined in section two hun-  
16 dred nine of the social security act.

17 (c) The term “employee” includes an officer of the  
18 state, or one of its political subdivisions or instrumental-  
19 ities.

20 (d) The term “state agency” means the state auditor.

21 (e) The term “federal agency” means in each case such  
22 federal officer, department, or agency as is charged on be-  
23 half of the federal government, by or under the applicable  
24 federal law, with the particular federal functions referred  
25 to in this act in connection with such term.

26 (f) The term “political subdivision” includes any coun-  
27 ty, municipal corporation, or school district.

28 (g) The term “instrumentality”, when referring to an  
29 instrumentality of a state or political subdivision, includes  
30 only a legal entity which is separate and distinct from

31 the state or such subdivision and whose employees are  
32 not by virtue of their relation to such entity employees  
33 of the state or such subdivisions.

34 (h) The term "applicable federal law" refers to such  
35 provisions of federal law, including federal regulations  
36 and requirements issued pursuant thereto, if and when  
37 enacted, as provide for extending the benefits of title II  
38 of the social security act to employees of states, political  
39 subdivisions, and their instrumentalities.

40 (i) The term "social security act" means the act of Con-  
41 gress approved August fourteenth, one thousand nine hun-  
42 dred thirty-five, chapter five hundred thirty-one, forty-  
43 nine statutes six hundred twenty, officially cited as the  
44 "social security act", as such act has been and may from  
45 time to time be amended.

46 (j) The term "federal insurance contributions act"  
47 means sub-chapter A of chapter nine of the federal in-  
48 ternal revenue code as such code has been and may from  
49 time to time be amended.

Sec. 3. *Federal-State Agreement; Interstate Agree-*  
2 *ments.*—(a) The state agency, with the approval of the  
3 governor, is hereby authorized upon enactment of ap-  
4 plicable federal law, to enter on behalf of the state into an  
5 agreement with the federal agency, consistent with the  
6 terms and provisions of this act, for the purpose of ex-  
7 tending the benefits of the federal old-age and survivors  
8 insurance system to employees of the state or any po-  
9 litical subdivision thereof, or of any instrumentality  
10 of any one or more of the foregoing, with respect to  
11 services specified in such agreement, which constitute  
12 "employment" as defined in section two of this act.  
13 Such agreement may contain such provisions relat-  
14 ing to coverage, benefits, contributions, effective date,  
15 modification and termination of the agreement, admin-  
16 istration, and other appropriate provisions as the state  
17 agency and federal agency shall agree upon, but, except  
18 as may be otherwise required by or under applicable  
19 federal law as to the services to be covered, such agree-  
20 ment shall provide in effect that:

21 (1) Benefits will be provided for employees whose  
22 services are covered by the agreement, and their depend-

23 ents and survivors, on the same basis as though such serv-  
24 ices constituted employment within the meaning of title  
25 II of the social security act.

26 (2) The state will pay to the federal agency, at such  
27 time or times as may be prescribed by the applicable fed-  
28 eral law or by regulation of the federal agency, contribu-  
29 tions with respect to wages, as defined in section two of  
30 this act, equal to the sum of the taxes which would be  
31 imposed by sections one thousand four hundred and one  
32 thousand four hundred ten of the federal insurance con-  
33 tributions act if the services covered by the agreement  
34 constituted employment within the meaning of that act.

35 (3) Such agreement shall be effective with respect to  
36 services performed after a date specified therein but  
37 shall in no event cover (a), in the case of state employees,  
38 any service performed prior to the beginning of the first  
39 calendar month after the date on which such agreement  
40 is entered into, or (b), in the case of employees of a po-  
41 litical subdivision or of an instrumentality of either the  
42 state or a political subdivision, any service performed  
43 prior to the beginning of the first calendar month after  
44 the approval of the plan submitted under section five.

45 (4) All services which constitute employment as de-  
46 fined in section two and are performed in the employ of  
47 the state by employees of the state, shall be covered by  
48 the agreement.

49 (5) All services which (a) constitute employment as  
50 defined in section two, (b) are performed in the employ  
51 of a political subdivision or in the employ of an instru-  
52 mentality of either the state or a political subdivision,  
53 and (c) are covered by a plan which is in conformity with  
54 the terms of the agreement and has been approved by  
55 the state agency under section five, shall be covered by  
56 the agreement.

57 (b) The state agency is hereby authorized to enter on  
58 behalf of the state into an agreement, consistent to the  
59 extent practicable with the terms and provisions of this  
60 act, with the appropriate agency or agencies of any other  
61 state or states and with the federal agency, whereby the  
62 benefits of the federal old-age and survivors insurance  
63 system shall be extended to employees of any instru-

64 mentality jointly created by this state and such other  
65 state or states.

Sec. 4. *Contributions by State Employees.*—(a) Every  
2 employee of the state whose services are covered by an  
3 agreement entered into under section three shall be re-  
4 quired to pay for the period of such coverage, into the  
5 contribution fund established by section six, contribu-  
6 tions, with respect to wages, as defined in section two of  
7 this act, equal to the amount of tax which would be im-  
8 posed by section one thousand four hundred of the fed-  
9 eral insurance contributions act if such services consti-  
10 tuted employment within the meaning of that act. Such  
11 liability shall arise in consideration of the employee's re-  
12 tention in the service, or his entry upon such service, after  
13 the enactment of this act.

14 (b) The contribution imposed by this section shall be  
15 collected by the state by deducting the amount of the  
16 contribution from wages as and when paid, but failure  
17 to make such deduction shall not relieve the employee  
18 from liability for such contribution.

19 (c) If more or less than the correct amount of the con-  
20 tribution imposed by this section is paid or deducted with  
21 respect to any remuneration, proper adjustments, or re-  
22 fund if adjustment is impracticable, shall be made, with-  
23 out interest, in such manner and at such times as the state  
24 agency shall prescribe.

Sec. 5. *Plans for Coverage of Employees of Political  
2 Subdivisions and of State and Local Instrumentalities.*—

3 (a) Each political subdivision of the state and each in-  
4 strumentality of the state or of a political subdivision is  
5 hereby authorized to submit for approval by the state  
6 agency a plan for extending the benefits of title II of  
7 the social security act, in conformity with applicable  
8 federal law, to employees of any such political sub-  
9 division or instrumentality. If not precluded by applic-  
10 able federal law and under such conditions as the state  
11 agency may by regulation prescribe, two or more such  
12 political subdivisions or instrumentalities may, for the  
13 purposes of this act, form a joint coverage unit and as  
14 such submit for approval a joint plan if otherwise, because



15 of the requirements of the agreement entered into pur-  
16 suant to section three or because of the requirements  
17 imposed by or under applicable federal law, any sub-  
18 division or instrumentality included in such unit would  
19 be unable to submit an approvable plan. Each such plan  
20 or any amendment thereof shall be approved by the  
21 state agency if it finds that such plan, or such plan as  
22 amended, is in conformity with such requirements as are  
23 provided in regulations of the state agency, except that  
24 no such plan shall be approved unless:

25 (1) It is in conformity with the requirements of the  
26 applicable federal law and with the agreement entered  
27 into under section three.

28 (2) It provides that all services which constitute em-  
29 ployment as defined in section two and are performed in  
30 the employ of the political subdivision or instrumentality,  
31 or in the employ of any member of a joint coverage unit  
32 submitting the plan, by any employees thereof, shall be  
33 covered by the plan.

34 (3) It specifies the source or sources from which the  
35 funds necessary to make the payments required by para-  
36 graph (1) of subsection (c) and by subsection (d) are  
37 expected to be derived and contains reasonable assur-  
38 ance that such sources will be adequate for such pur-  
39 pose.

40 (4) It provides for such methods of administration of  
41 the plan by the political subdivision or instrumentality  
42 or members of the joint coverage unit as are found by  
43 the state agency to be necessary for the proper and  
44 efficient administration of the plan.

45 (5) It provides that the political subdivision or instru-  
46 mentality or members of the joint coverage unit will  
47 make such reports, in such form and containing such  
48 information, as the state agency may from time to time  
49 require, and comply with such provisions as the state  
50 agency or the federal agency may from time to time  
51 find necessary to assure the correctness and verification  
52 of such reports.

53 (6) It authorizes the state agency to terminate the plan  
54 in its entirety or, in the discretion of the state agency, as  
55 to any member of a joint coverage unit, if it finds that

56 there has been a failure to comply substantially with any  
57 provisions contained in such plan, such termination to  
58 take effect at the expiration of such notice and on such  
59 conditions as may be provided by regulations of the  
60 state agency and be consistent with applicable federal  
61 law.

62 (b) The state agency shall not finally refuse to approve  
63 a plan submitted under subsection (a), and shall not  
64 terminate an approved plan, without reasonable notice  
65 and opportunity for hearing to each political subdivision  
66 or instrumentality affected thereby.

67 (c) (1) Each political subdivision or instrumentality  
68 as to which a plan has been approved under this section  
69 shall pay into the contribution fund, with respect to  
70 wages, as defined in section two of this act, at such time  
71 or times as the state agency may by regulation prescribe,  
72 contributions in the amounts and at the rates specified  
73 in the applicable agreement entered into by the state  
74 agency under section three.

75 (2) Every political subdivision or instrumentality re-  
76 quired to make payments under paragraph (1) of this  
77 subsection is authorized, in consideration of the em-  
78 ployee's retention in, or entry upon, employment after  
79 enactment of this act, to impose upon its employees, as  
80 to services which are covered by an approved plan, a  
81 contribution with respect to wages, as defined in section  
82 two of this act, not exceeding the amount of tax which  
83 would be imposed by section one thousand four hundred  
84 of the federal insurance contributions act if such services  
85 constituted employment within the meaning of that act,  
86 and to deduct the amount of such contribution from the  
87 wages as and when paid. Contributions so collected shall  
88 be paid into the contribution fund in partial discharge  
89 of the liability of such political subdivision or instru-  
90 mentality under paragraph (1) of this subsection. Fail-  
91 ure to deduct such contribution shall not relieve the  
92 employee or employer of liability therefor.

93 (d) Delinquent payments due under paragraph (1) of  
94 subsection (c) may, with interest at the rate of six per  
95 centum per annum, be recovered by action in a court of  
96 competent jurisdiction against the political subdivision

97 or instrumentality liable therefor or may, at the request  
98 of the state agency, be deducted from any other moneys  
99 payable to such subdivision or instrumentality by any  
100 department or agency of the state.

Sec. 6. *Contribution Fund.*—(a) There is hereby estab-  
2 lished a special fund to be known as the contribution  
3 fund. Such fund shall consist of and there shall be de-  
4 posited in such fund: (1) All contributions, interest, and  
5 penalties collected under sections four and five. (2) All  
6 moneys appropriated thereto under this act. (3) All  
7 moneys paid to the state pursuant to any agreement  
8 entered into under section three (b) of this act. (4) Any  
9 property or securities and earnings thereof acquired  
10 through the use of moneys belonging to the fund. (5)  
11 Interest earned upon any moneys in the fund. (6) All  
12 sums recovered upon the bond of the custodian or other-  
13 wise for losses sustained by the fund and all other  
14 moneys received for the fund from any other source.  
15 All moneys in the fund shall be mingled and undivided.  
16 Subject to the provisions of this act, the state agency  
17 is vested with full power, authority and jurisdiction over  
18 the fund, including all moneys and property or securi-  
19 ties belonging thereto, and may perform any and all  
20 acts whether or not specifically designated, which are  
21 necessary to the administration thereof consistent with  
22 the provisions of this act.

23 (b) The contribution fund shall be established and held  
24 separate and apart from any other funds or moneys of  
25 the state and shall be used and administered exclusively  
26 for the purpose of this act. Withdrawals from such fund  
27 shall be made for, and solely for (A) payment of  
28 amounts required to be paid to the federal agency pur-  
29 suant to an agreement entered into under section three;  
30 (B) payment of refunds provided for in section four (c)  
31 of this act; and (C) refunds of overpayments, not other-  
32 wise adjustable, made by a political subdivision or in-  
33 strumentality.

34 (c) From the contribution fund the custodian of the  
35 fund shall pay to the federal agency such amounts and  
36 at such time or times as may be directed by the state

37 agency in accordance with any agreement entered into  
38 under section three and applicable federal law.

39 (d) The treasurer of the state shall be ex officio treas-  
40 urer and custodian of the contribution fund and shall ad-  
41 minister such fund in accordance with the provisions of  
42 this act and the directions of the state agency and shall  
43 pay all warrants drawn upon it in accordance with the  
44 provisions of this section and with such regulations as the  
45 state agency may prescribe pursuant thereto.

46 (e) (1) There are hereby authorized to be appropri-  
47 ated biennially to the contribution fund, in addition to  
48 the contributions collected and paid into the contribution  
49 fund under sections four and five, to be available for the  
50 purposes of section six (b) and (c) until expended, such  
51 additional sums as are found to be necessary in order to  
52 make the payments to the federal agency which the state  
53 is obligated to make pursuant to an agreement entered  
54 into under section three.

55 (2) The state agency shall submit to the board of pub-  
56 lic works, at least ninety days in advance of the beginning  
57 of each regular session of the Legislature, an estimate of  
58 the amounts authorized to be appropriated to the contri-  
59 bution fund by paragraph (1) of this subsection for the  
60 next appropriation period.

Sec. 7. *Rules and Regulations.*—The state agency shall  
2 make and publish such rules and regulations, not incon-  
3 sistent with the provisions of this act, as it finds necessary  
4 or appropriate to the efficient administration of the func-  
5 tions with which it is charged under this act.

Sec. 8. *Studies and Reports.*—The state agency shall  
2 make studies concerning the problem of old-age and sur-  
3 vivors insurance protection for employees of the state  
4 and local governments and their instrumentalities and  
5 concerning the operation of agreements made and plans  
6 approved under this act and shall submit a report to the  
7 Legislature at the beginning of each regular session, cov-  
8 ering the administration and operation of this act during  
9 the preceding biennium, including such recommendations  
10 for amendments to this act as it considers proper.

Sec. 9. *Separability*.—If any provision of this act, or the application thereof to any person or circumstance is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

Sec. 10. *Repeal*.—All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed.

## CHAPTER 124

(Senate Bill No. 62—By Mr. Johnston, Mr. President)

AN ACT to amend and reenact section three, article 5-a, chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the maintenance and treatment of patients in state tuberculosis institutions.

[Passed February 15, 1949; in effect July 1, 1949. Approved by the Governor.]

### Article 5-a. Tuberculosis Control.

#### Section

#### 3. Maintenance and treatment of patients.

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

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

#### Section 3. *Maintenance and Treatment of Patients*.—

2 The cost of maintenance and treatment of patients ad-  
3 mitted to state tuberculosis institutions shall be paid out  
4 of funds appropriated for the respective institutions. No  
5 patient shall be required to pay for such maintenance  
6 and treatment, but the institutions are authorized to  
7 receive any voluntary payments therefor.

## CHAPTER 125

(House Bill No. 191—By Mr. Schupbach and Mr. Wilkison)

AN ACT to amend and reenact section three, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the duties, bond, and residence of the warden of West Virginia penitentiary.

[Passed March 2, 1949; in effect from passage. Approved by the Governor.]

### Article 5. The Penitentiary.

#### Section

3. Warden; duties; bond; residence.

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

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

Section 3. *Warden; Duties; Bond; Residence.*—The  
2 warden shall be the chief executive officer of the peni-  
3 tentiary, and shall have charge of its internal police and  
4 management, and provide for feeding, clothing, working  
5 and taking care of the convicts, subject to the control  
6 of the state board of control. The warden shall promptly  
7 enforce all orders, rules and regulations made by the  
8 board of control, enforce strict discipline among the  
9 convicts, protect and preserve the property of the state,  
10 and may for that purpose punish the convicts, or cause  
11 them to be punished, in the manner authorized by the  
12 board of control. He shall have the custody and control  
13 of all the real and personal property at the penitentiary,  
14 subject to the orders of the board of control. The warden  
15 shall give bond in such sum as the board of control may  
16 require, with one or more sureties satisfactory to the  
17 board of control, conditioned for the faithful performance  
18 of the duties of his office, and for accounting for and  
19 paying over, as required by law, all moneys which may  
20 come into his hands by virtue of such office, which bond,  
21 when approved by the board of control, shall be filed

22 with and recorded by the treasurer of such board. The  
23 warden shall reside in the warden's apartments at the  
24 penitentiary, or at any other place in Marshall county,  
25 convenient to the penitentiary, but shall not, by reason of  
26 such residence, be entitled to vote in Marshall county.

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## CHAPTER 126

(House Bill No. 391—By Mr. File)

AN ACT to amend and reenact section one, article one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, relating to the tax commissioner, and authorizing the attorney general, upon the request of the tax commissioner, to select and appoint an assistant attorney general, to perform, under the supervision and direction of the attorney general, such duties as may be required of him by the tax commissioner.

[Passed March 12, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 1. Supervision.

#### Section

1. Tax commissioner; appointment of assistant attorney general to perform duties of commissioner.

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

That section one, article one, 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. *Tax Commissioner; Appointment of Assistant Attorney General to Perform Duties of Commissioner.*—
- 2 There shall be a tax commissioner who shall be appointed
  - 3 by the governor, by and with the advice and consent of
  - 4 the senate. The tax commissioner in office when this code
  - 5 takes effect shall, unless sooner removed, continue to
  - 6 serve until his term expires, and his successor has been
  - 7 appointed and has qualified. On or before the first day
  - 8 of March, one thousand nine hundred thirty-five, and on
  - 9

10 or before the first day of March of each sixth year there-  
11 after, the governor shall appoint a tax commissioner for  
12 a term of six years, commencing on said first day of  
13 March. The person so appointed shall take the oath or  
14 affirmation prescribed by section five of article four of  
15 the constitution. He shall give bond with good security,  
16 to be approved by the governor, in the penalty of five  
17 thousand dollars. The salary of the tax commissioner shall  
18 be eight thousand dollars a year. He shall be repaid his  
19 actual disbursements for traveling expenses. He shall be  
20 provided with an office in the capitol, and with such fur-  
21 niture and clerical assistance as shall be necessary.  
22 The tax commissioner, if he deem such action neces-  
23 sary, may request the attorney general to appoint an as-  
24 sistant attorney general, who shall perform, under the  
25 supervision and direction of the attorney general, such  
26 duties as may be required of him by the tax commissioner.  
27 The attorney general, in pursuance of such request, may  
28 select and appoint an assistant attorney general, to serve  
29 during the will and pleasure of the attorney general, and  
30 such assistant shall receive a salary not in excess of six  
31 thousand dollars per annum, to be paid out of any funds  
32 made available for that purpose by the Legislature to the  
33 office of the tax commissioner.

## CHAPTER 127

(Senate Bill No. 48—By Mr. Reed)

AN ACT to amend and reenact section five and sections five-  
(one) to five-(fifty-six), inclusive, article two, chapter  
eleven of the code of West Virginia, one thousand nine  
hundred thirty-one, as amended, relating to the compen-  
sation of county assessors.

[Passed March 12, 1949; in effect ninety days from passage. Approved by the Governor.]

### Article 2. Assessors.

#### Section

5. Annual salary of assessors.



5-(1) to 5-(55). Salaries of assessors in the various counties of the state.

5-(56). Additional compensation; salaries paid out of county fund.

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

That section five and sections five-(one) to five-(fifty-six), inclusive, 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. *Annual Salary of Assessors.*—The annual  
2 salary of the assessor in each county shall, on and after  
3 January one, one thousand nine hundred fifty-three, be  
4 in the amounts set forth in sections one-(one) to one-  
5 (fifty-five), inclusive, of this article.

Sec. 5-(1). *Barbour County.*—For the county of  
2 Barbour, two thousand two hundred dollars.

Sec. 5-(2). *Berkeley County.*—For the county of  
2 Berkeley, two thousand dollars.

Sec. 5-(3). *Boone County.*—For the county of Boone,  
2 two thousand seven hundred dollars.

Sec. 5-(4). *Braxton County.*—For the county of Brax-  
2 ton, two thousand three hundred dollars.

Sec. 5-(5). *Brooke County.*—For the county of Brooke,  
2 two thousand eight hundred dollars.

Sec. 5-(6). *Cabell County.*—For the county of Cabell,  
2 four thousand dollars.

Sec. 5-(7). *Calhoun County.*—For the county of Cal-  
2 houn, one thousand two hundred dollars.

Sec. 5-(8). *Clay County.*—For the county of Clay, one  
2 thousand seven hundred dollars.

Sec. 5-(9). *Doddridge County.*—For the county of Dod-  
2 dridge, one thousand eight hundred dollars.

Sec. 5-(10). *Fayette County.*—For the county of Fay-  
2 ette, not less than four thousand two hundred dollars nor  
3 more than four thousand eight hundred dollars, to be fixed  
4 by the county court.

2      Sec. 5-(11). *Gilmer County*.—For the county of Gilmer,  
2      one thousand eight hundred dollars.

2      Sec. 5-(12). *Grant County*.—For the county of Grant,  
2      one thousand five hundred dollars.

2      Sec. 5-(13). *Greenbrier County*.—For the county of  
2      Greenbrier, two thousand dollars.

2      Sec. 5-(14). *Hampshire County*.—For the county of  
2      Hampshire, one thousand seven hundred dollars.

2      Sec. 5-(15). *Hancock County*.—For the county of Han-  
2      cock, three thousand dollars.

2      Sec. 5-(16). *Hardy County*.—For the county of Hardy,  
2      two thousand dollars.

2      Sec. 5-(17). *Harrison County*.—For the county of Harri-  
2      son, four thousand dollars.

2      Sec. 5-(18). *Jackson County*.—For the county of Jack-  
2      son, one thousand five hundred dollars.

2      Sec. 5-(19). *Jefferson County*.—For the county of Jef-  
2      ferson, two thousand six hundred dollars.

2      Sec. 5-(20). *Kanawha County*.—For the county of Ka-  
2      nawha, five thousand dollars.

2      Sec. 5-(21). *Lewis County*.—For the county of Lewis,  
2      two thousand six hundred dollars.

2      Sec. 5-(22). *Lincoln County*.—For the county of Lin-  
2      coln, two thousand three hundred dollars.

2      Sec. 5-(23). *Logan County*.—For the county of Logan,  
2      four thousand dollars.

2      Sec. 5-(24). *Marion County*.—For the county of Marion,  
2      three thousand six hundred dollars.

2      Sec. 5-(25). *Marshall County*.—For the county of Mar-  
2      shall, three thousand dollars.

2      Sec. 5-(26). *Mason County*.—For the county of Mason,  
2      one thousand eight hundred dollars.

2     Sec. 5-(27). *McDowell County*.—For the county of McDowell, three thousand nine hundred dollars.

2     Sec. 5-(28). *Mercer County*.—For the county of Mercer, four thousand eight hundred dollars.

2     Sec. 5-(29). *Mineral County*.—For the county of Mineral, two thousand six hundred dollars.

2     Sec. 5-(30). *Mingo County*.—For the county of Mingo, four thousand dollars.

2     Sec. 5-(31). *Monongalia County*.—For the county of Monongalia, two thousand six hundred dollars.

2     Sec. 5-(32). *Monroe County*.—For the county of Monroe, one thousand five hundred dollars.

2     Sec. 5-(33). *Morgan County*.—For the county of Morgan, not less than one thousand two hundred dollars nor  
3 more than one thousand eight hundred dollars, to be fixed  
4 by the county court.

2     Sec. 5-(34). *Nicholas County*.—For the county of Nicholas, two thousand two hundred dollars.

2     Sec. 5-(35). *Ohio County*.—For the county of Ohio, three thousand eight hundred dollars.

2     Sec. 5-(36). *Pendleton County*.—For the county of Pendleton, one thousand five hundred dollars.

2     Sec. 5-(37). *Pleasants County*.—For the county of Pleasants, one thousand eight hundred dollars.

2     Sec. 5-(38). *Pocahontas County*.—For the county of Pocahontas, one thousand two hundred dollars.

2     Sec. 5-(39). *Preston County*.—For the county of Preston, two thousand eight hundred dollars.

2     Sec. 5-(40). *Putnam County*.—For the county of Putnam, two thousand four hundred dollars.

2     Sec. 5-(41). *Raleigh County*.—For the county of Raleigh, three thousand six hundred dollars.

2     Sec. 5-(42). *Randolph County*.—For the county of Randolph, three thousand dollars.

2       Sec. 5-(43). *Ritchie County*.—For the county of Ritchie,  
2       two thousand dollars.

2       Sec. 5-(44). *Roane County*.—For the county of Roane,  
2       one thousand eight hundred dollars.

2       Sec. 5-(45). *Summers County*.—For the county of Sum-  
2       mers, one thousand eight hundred dollars.

2       Sec. 5-(46). *Taylor County*.—For the county of Taylor,  
2       two thousand two hundred fifty dollars.

2       Sec. 5-(47). *Tucker County*.—For the county of Tucker,  
2       two thousand two hundred dollars.

2       Sec. 5-(48). *Tyler County*.—For the county of Tyler, two  
2       thousand four hundred dollars.

2       Sec. 5-(49). *Upshur County*.—For the county of Upshur,  
2       two thousand dollars.

2       Sec. 5-(50). *Wayne County*.—For the county of Wayne,  
2       three thousand three hundred dollars.

2       Sec. 5-(51). *Webster County*.—For the county of Web-  
2       ster, two thousand dollars.

2       Sec. 5-(52). *Wetzel County*.—For the county of Wetzel,  
2       two thousand six hundred dollars.

2       Sec. 5-(53). *Wirt County*.—For the county of Wirt, one  
2       thousand one hundred dollars.

2       Sec. 5-(54). *Wood County*.—For the county of Wood,  
2       three thousand two hundred dollars.

2       Sec. 5-(55). *Wyoming County*.—For the county of  
2       Wyoming, three thousand dollars.

2       Sec. 5-(56). *Additional Compensation; Salaries Paid*  
2       *Out of County Fund*.—In addition to the above salary  
3       each assessor shall receive a commission of ten per cent  
4       on all state school, road and municipal capitation taxes  
5       collected by him. The salaries of assessors and their dep-  
6       uties, assistants and employees shall be paid out of the  
7       county fund at the time and in the manner now pro-  
8       vided by law for paying other county officers.

## CHAPTER 128

(House Bill No. 179—By Mr. Speaker, Mr. Flannery)

AN ACT to amend and reenact sections two, six-b, six-c and six-d, article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended by chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, relating to tax levies under the tax limitation amendment.

[Passed February 23, 1949; in effect from passage. Approved by the Governor.]

### Article 8. Levies.

#### Section

2. Legislative findings.
- 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.

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

That sections two, six-b, six-c and six-d, article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended by chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, be amended and reenacted to read as follows:

- Section 2. *Legislative Findings.*—The Legislature, having carefully analyzed the fiscal affairs of the state and its political subdivisions with particular reference to the reduction of the outstanding bonded debt of political subdivisions incurred prior to the adoption of the tax limitation amendment, finds:
- (1) That the total outstanding bonded indebtedness of subdivisions of the state incurred prior to the adoption of the tax limitation amendment has been reduced since the year one thousand nine hundred thirty-nine—one thousand nine hundred forty, by approximately sixty-five per cent and the annual requirements of service upon bonded debt have been reduced by completed amortizations from slightly less than six million five hundred

15 thousand dollars in that year, to approximately two mil-  
16 lion three hundred thousand dollars for the fiscal year  
17 beginning on the first day of July, one thousand nine  
18 hundred forty-nine, according to findings certified to the  
19 Legislature by the state sinking fund commission.

20 (2) That it is therefore now possible to adjust the allo-  
21 cation of levies to redistribute so much of the rates pre-  
22 viously allocated for debts incurred prior to the adoption  
23 of the tax limitation amendment as represent debts com-  
24 pletely liquidated, so as to meet the increased levying  
25 requirements of county courts, boards of education, and  
26 municipalities, and that such adjustment is in keeping  
27 with sound finance, the preservation of local fiscal re-  
28 sponsibility for local services, and the intention of the tax  
29 limitation amendment.

Sec. 6-b. *Maximum Levies on Each Classification by*  
2 *County Courts; Order of Levies.*—County courts are here-  
3 by authorized to lay not in excess of the following maxi-  
4 mum levies, for the purposes specified and in the follow-  
5 ing order:

6 (1) With respect to the county as a whole for the pay-  
7 ment of (a) interest and sinking fund requirements for  
8 bonded indebtedness incurred prior to the adoption of  
9 the tax limitation amendment; and to the extent not so  
10 required, (b) other legally incurred contractual indebted-  
11 ness, not bonded, if any, incurred prior to the adoption  
12 of the tax limitation amendment, of the county as follows:  
13 On class I property, twenty-five one-hundredths of one  
14 cent; on class II property, one-half of one cent and on  
15 classes III and IV property, one cent.

16 (2) With respect to a magisterial or special taxing dis-  
17 trict for which the county court is required to lay the  
18 levy, for the payment of (a) interest and sinking fund  
19 requirements for bonded indebtedness, incurred prior to  
20 the adoption of the tax limitation amendment; and to the  
21 extent not so required, (b) other legally incurred con-  
22 tractual indebtedness not bonded, if any, incurred prior  
23 to the adoption of the tax limitation amendment, as fol-  
24 lows: On class I property, two and fifteen one-hundredths  
25 cents; on class II property, four and three-tenths cents;

26 and on classes III and IV property, eight and six-tenths  
27 cents.

28 (3) For general county current expense, as follows:  
29 On class I property, eleven and nine-tenths cents; on class  
30 II property, twenty-three and eight-tenths cents; and on  
31 classes III and IV property, forty-seven and six-tenths  
32 cents. But in a county where the total assessed valuation  
33 of all classes of property is less than six million dollars,  
34 the county court may, with the prior written approval of  
35 the tax commissioner, exceed the rates of levy for gen-  
36 eral county current expense by not more than twenty-five  
37 per cent of the rates specified,

Sec. 6-c. *Maximum Levies on Each Classification by*  
2 *County Boards of Education; Order of Levy.*—County  
3 boards of education are hereby authorized to lay not in  
4 excess of the following maximum levies, for the purposes  
5 specified and in the following order:

6 (1) With respect to a magisterial, independent or other  
7 school district existing in a county prior to May twenty-  
8 second, one thousand nine hundred thirty-three, or any  
9 special taxing district for which the board of education  
10 is required to lay the levy, for the payment of (a) interest  
11 and sinking fund requirements for bonded indebtedness  
12 incurred prior to the adoption of the tax limitation  
13 amendment; and to the extent not so required, (b) other  
14 legally incurred contractual indebtedness not bonded, if  
15 any, incurred prior to the adoption of the tax limitation  
16 amendment, as follows: On class I property, thirty-five  
17 one-hundredths of one cent; on class II property, seven-  
18 tenths of one cent; and on classes III and IV property, one  
19 and four-tenths cents.

20 (2) For either or both of (a) the permanent improve-  
21 ment fund and (b) the payment of interest and sinking  
22 fund requirements for bonded indebtedness incurred sub-  
23 sequent to the adoption of the tax limitation amendment,  
24 as follows: On class I property, one and five-tenths cents;  
25 on class II property, three cents; and on classes III and  
26 IV property, six cents.

27 (3) For the general current expenses of schools, as fol-  
28 lows: On class I property, twenty-one and one-tenth

29 cents; on class II property, forty-two and two-tenths  
30 cents; and on classes III and IV property, eighty-four and  
31 four-tenths cents. But if the tax commissioner has ap-  
32 proved the levy of an additional amount for the general  
33 current expenses of the county as authorized by section  
34 six-b, subsection three, the amount of the levy authorized  
35 for boards of education by this subsection shall be re-  
36 duced by the tax commissioner to that extent.

37 If the rates of levy under (2) above are not required  
38 in whole or in part for the purposes for which they are  
39 allocated by this section, the county board of education  
40 may, with the prior written approval of the state board  
41 of school finance, created by section three, article nine-b,  
42 chapter eighteen of the code, as amended, lay such rates  
43 of levy or portion thereof not so required, for the general  
44 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  
4 the following maximum levies, for the purposes specified,  
5 and in 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 indebted-  
10 ness, not bonded, if any, incurred prior to the adoption  
11 of the tax limitation amendment, as follows: On class I  
12 property, one and five-tenths cents; on class II property,  
13 three cents; and on class IV property, six cents.

14 (2) For general current expense purposes, as follows:  
15 On class I property, eleven cents; on class II property,  
16 twenty-two cents; and on class IV property, forty-four  
17 cents.

## CHAPTER 129

(Senate Bill No. 40—By Mr. Love)

AN ACT to amend and reenact section nine, article eleven,  
chapter eleven of the code of West Virginia, one thousand



nine hundred thirty-one, as amended, pertaining to the lien of the state of West Virginia for inheritance taxes.

[Passed March 12, 1949; in effect ninety days from passage. Approved by the Governor.]

## Article 11. Inheritance and Transfer Taxes.

### Section

#### 9. Lien for tax.

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

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

Section 9. *Lien for Tax.*—All such taxes upon any transfer and the interest that may accrue thereon, shall, until paid, be and remain a charge and lien upon the property transferred, superior to any lien created after such transfer, and no title shall vest or be transferred as to any such property, except subject to the lien for such taxes, and no such property shall be transferred or delivered, in whole or in part, until the payment into the treasury of the state of the amount of such tax. The person to whom the property is transferred, if he shall receive the same before the tax thereon is paid, and the executors, administrators and trustees having charge of every estate so transferred, shall be personally liable for such tax and interest until its payment: *Provided, however,* That such lien shall not be enforceable after the expiration of ten years from and after the death of the decedent, whose property is subject to tax under the provisions of this article: *Provided further,* That the limitation of ten years prescribed by this section shall not be construed to apply to any suit or proceeding now pending and undetermined, commenced prior to the effective date of this act, for the enforcement of any such lien otherwise legally enforceable but for said limitation.

## CHAPTER 130

(Senate Bill No. 206—By Mr. Eddy)

AN ACT to amend and reenact section eighty-six-a, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the limitation on institution of proceedings to set aside sales in prior suits to enforce payment of corporate license taxes.

[Passed March 5, 1949; in effect from passage. Approved by the Governor.]

### Article 12. License Taxes.

#### Section

86-a. Limitation on institution of proceedings to set aside sales in prior suits.

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

That section eighty-six-a, article twelve, 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 86-a. *Limitation on Institution of Proceedings to Set Aside Sales in Prior Suits.*—No suit or proceeding shall be instituted in any court of this state on and after the first day of January, one thousand nine hundred and fifty, for the purpose of setting aside the sale of all or any of the assets of any corporation heretofore sold by order of the court in any former suit instituted under the preceding section on the ground that process was served on the auditor or that service thereof was accepted by him.

## CHAPTER 131

(Senate Bill No. 152—By Mr. Johnston, Mr. President)

AN ACT to amend and reenact sections three and twenty-two, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended by chapter one hundred fifty-four, acts of the Legisla-

ture of West Virginia, regular session, one thousand nine hundred forty-seven, relating to the tax on gasoline.

[Passed March 11, 1949; in effect July 1, 1949. Approved by the Governor.]

#### **Article 14. Gasoline Tax.**

##### **Section**

3. Amount, measure and lien of tax; notice of discontinuance of business.
22. Taxes to be used for road purposes.

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

That sections three and twenty-two, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended by chapter one hundred fifty-four, acts of the Legislature, regular session, one thousand nine hundred forty-seven, be amended and reenacted to read as follows:

Section 3. *Amount, Measure and Lien of Tax; Notice of Discontinuance of Business.*—There is hereby imposed upon every person who is a distributor, retail dealer or importer under the terms of this article, an excise tax based on the quantities of all gasoline produced, purchased, sold or used in this state, which tax shall be equivalent to five cents per gallon thereof, and shall be paid as hereinafter provided.

A distributor shall use as the measure of the tax the gallonage produced, purchased, sold or used in this state (as provided in section four of this article). Gallonage shall be included in the measure of the tax by refiners and producers when such gallonage has been placed into any tank from which withdrawals are made for sales or transfer to any other person.

An importer shall use as the measure of the tax the gallonage purchased and received for whatever use (as provided in section six of this article).

A retail dealer shall use as the measure of the tax the gallonage purchased or obtained by him (as provided in section five of this article).

The excise tax imposed by this article shall be paid by the person first producing, or receiving in this state, the gallonage of gasoline which under this article shall form

25 the measure of such tax; but in no case shall any such  
26 gallonage be used more than once in determining taxes  
27 due hereunder.

28 The taxes imposed by this article are in addition to all  
29 other taxes now imposed by law.

30 The excise tax imposed by this article shall accrue from  
31 the date of production, purchase, sale or use of the gaso-  
32 line. The penalties imposed by section thirteen of this  
33 article shall accrue from the date they become due and  
34 payable. A tax due and unpaid under this article shall be  
35 a debt due the state of West Virginia. It shall be a per-  
36 sonal obligation of the taxpayer and shall be a lien in favor  
37 of the state of West Virginia upon all property and rights  
38 to property, whether real or personal, belonging to such  
39 taxpayer. The lien shall arise when a taxpayer fails to  
40 file his return and remit the tax at the time required by  
41 this article. Such lien shall not be valid or enforceable  
42 against a purchaser (including lien creditor) of real estate  
43 or personal property for a valuable consideration, with-  
44 out notice unless docketed in the office of the clerk of the  
45 county court as provided in sections one and two, article  
46 ten-c, chapter thirty-eight of the code of West Virginia,  
47 one thousand nine hundred thirty-one, as last amended  
48 and reenacted by chapter ninety-nine, acts of the Legis-  
49 lature, regular session, one thousand nine hundred forty-  
50 three.

51 Whenever a distributor, importer or retail dealer ceases  
52 to engage in business within this state by reason of the dis-  
53 continuance, sale or transfer of the business of such dis-  
54 tributor, importer or retail dealer, it shall be his duty to  
55 notify the tax commissioner in writing at the time of the  
56 discontinuance, sale or transfer. Such notice shall give  
57 the date of discontinuance and in the event of a sale or  
58 transfer of the business, the date thereof and the name  
59 and address of the purchaser or transferee thereof; all  
60 taxes accruing under this article, but not yet due and  
61 payable under the provisions of this article shall, notwith-  
62 standing such provisions, become due and payable con-  
63 currently with such discontinuance, sale or transfer, and  
64 it shall be the duty of such distributor, importer or retail  
65 dealer to make a report and pay all such taxes, and to sur-

66 render to the tax commissioner the license certificate  
67 theretofore issued, under the provisions of this article.

68 Unless the notice shall have been given to the tax com-  
69 missioner as above provided, such purchaser or transferee  
70 shall be liable to the state of West Virginia for the amount  
71 of all taxes and penalties, under this article accrued  
72 against such distributor, importer or retail dealer so sell-  
73 ing or transferring his business, on the date of such sale  
74 or transfer, but only to the extent of the value of the prop-  
75 erty and business thereby acquired from such distributor,  
76 importer or retail dealer.

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 pur-  
4 pose of the construction, reconstruction, maintenance and  
5 repair of roads and highways, and for the payment of the  
6 interest and sinking fund on state bonds issued for road  
7 purposes.

8 Unless necessary for such bond requirements, one-fifth  
9 of the taxes collected under the provisions of this article  
10 shall be used for secondary road purposes.

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## CHAPTER 132

(House Bill No. 52—By Mr. Nuzum and Mr. Ellis)

AN ACT to amend and reenact section thirteen, article sixteen,  
chapter eleven of the code of West Virginia, one thousand  
nine hundred thirty-one, as amended, relating to unlawful  
actions of licensee under the nonintoxicating beer law  
and prescribing penalties therefore.

[Passed February 23, 1949; in effect from passage. Approved by the Governor.]

### Article 16. Nonintoxicating beer.

#### Section

13. Unlawful acts of licensees; penalties.

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

That section thirteen, article sixteen, 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. *Unlawful Acts of Licensees; Penalties.*—

2 It shall be unlawful:

3 (a) For any licensee, his, its or their servants, agents  
4 or employees to sell, give or dispense, or any individual  
5 to drink or consume, in or on any licensed premises or  
6 in any rooms directly connected therewith, nonintoxi-  
7 cating beer between the hours of midnight and seven  
8 o'clock the following morning on week days or before  
9 one o'clock in the afternoon on any Sunday;

10 (b) For any licensee, his, its or their servants, agents  
11 or employees, to sell, furnish or give any nonintoxicating  
12 beer to any person visibly or noticeably intoxicated, or  
13 to any insane persons, or to any habitual drunkard, or  
14 to any person under the age of eighteen years;

15 (c) For any distributor to sell or offer to sell, or any  
16 retailer to purchase or receive, any nonintoxicating beer  
17 except for cash; and no right of action shall exist to col-  
18 lect any claims for credit extended contrary to the pro-  
19 visions of this clause. Nothing herein contained shall  
20 prohibit a licensee from crediting to a purchaser the  
21 actual price charged for packages or containers returned  
22 by the original purchaser as a credit on any sale, or from  
23 refunding to any purchaser the amount paid or deposited  
24 for such containers when title is retained by the vendor;

25 (d) For any brewer or distributor or his, its or their  
26 agents, to transport or deliver nonintoxicating beer to  
27 any retail licensee on Sunday;

28 (e) For any brewer or distributor to give, furnish, rent  
29 or sell any equipment, fixtures, signs or supplies directly  
30 or indirectly or through a subsidiary or affiliate to any  
31 licensee engaged in selling products of the brewing in-  
32 dustry at retail, or to offer any prize, premium, gift, or  
33 similar inducement, except advertising matter of nominal  
34 value, to either trade or consumer buyers;

35 (f) For any licensee to transport, sell, deliver or pur-  
36 chase any nonintoxicating beer or product of the brewing  
37 industry upon which there shall appear a label or other  
38 informative data which in any manner refers to the  
39 alcoholic content of such beer or product of the brewing

40 industry, or upon the label of which there appears the  
41 word or words "strong", "full strength", "extra strength",  
42 "prewar strength", "high test" or other similar expressions  
43 bearing upon the alcoholic content of such product of  
44 the brewing industry, or which refers in any manner to  
45 the original alcoholic strength extract or balling proof  
46 from which such beverage was produced, except that  
47 such label shall contain a statement that the alcoholic  
48 content thereof does not exceed three and two-tenths per  
49 cent by weight;

50 (g) For any licensee to permit in his premises any  
51 lewd, immoral or improper entertainment, conduct or  
52 practice;

53 (h) For any licensee to possess a federal license, tax  
54 receipt or other permit entitling, authorizing or allowing  
55 such licensee to sell liquor or alcoholic drinks;

56 (i) For any licensee to obstruct the view of the interior  
57 of his premises by enclosure, lattice, drapes or any means  
58 which would prevent plain view of the patrons occupying  
59 such premises. The interior of all licensed premises shall  
60 be adequately lighted at all times: *Provided, however,*  
61 That provisions of this paragraph shall not apply to the  
62 premises of a Class B retailer;

63 (j) For any licensee to manufacture, import, sell, trade,  
64 barter, possess, or acquiesce in the sale, possession or  
65 consumption of any alcoholic liquors on the premises  
66 covered by such license or on premises directly or in-  
67 directly used in connection therewith;

68 (k) For any licensee to print, paint or place upon the  
69 door, window, or in any other public place in or about  
70 the premises, the word "saloon" or word of similar char-  
71 acter or nature, or for the word "saloon" or similar words  
72 to be used in any advertisement by the licensee;

73 (l) For any retail licensee to sell or dispense nonin-  
74 toxicating beer purchased or acquired from any source  
75 other than a licensed distributor or brewer under the laws  
76 of this state;

77 (m) For any licensee to permit loud, boisterous or dis-  
78 orderly conduct of any kind upon his premises or to  
79 permit the use of loud musical instruments if either or  
80 any of same may disturb the peace and quietude of the

81 community wherein such business is located. *Provided,*  
82 That no juke box or other musical instrument of like  
83 character shall be played or operated between the hours  
84 of midnight and seven o'clock the following morning on  
85 week days or before one o'clock in the afternoon of any  
86 Sunday: *And provided further,* That no licensee shall  
87 have in connection with his place of business any loud  
88 speaker located on the outside of the licensed premises  
89 that broadcasts or carries music of any kind.

90 (n) For any person whose license has been revoked  
91 as in this article provided, to obtain employment with  
92 any retailer within the period of one year from the date  
93 of such revocation, or for any retailer to employ know-  
94 ingly any such person within such time;

95 (o) For any distributor to sell, possess for sale, trans-  
96 port or distribute nonintoxicating beer except in the  
97 original container;

98 (p) For any licensee to permit any act to be done upon  
99 the licensed premises, the commission of which consti-  
100 tutes a crime under the laws of this state;

101 (q) For any Class B retailer to permit the consumption  
102 of nonintoxicating beer upon his licensed premises.

103 Any person who violates any provision of this article  
104 or who makes any false statement concerning any mate-  
105 rial fact in submitting application for license or for a  
106 renewal of a license or in any hearing concerning the  
107 revocation thereof, or who commits any of the acts  
108 herein declared to be unlawful, shall be guilty of a mis-  
109 demeanor, and shall be punished for each offense by a  
110 fine of not less than twenty-five dollars, nor more than  
111 five hundred dollars, or imprisoned in the county jail  
112 for not less than thirty days or more than six months, or  
113 by both fine and imprisonment in the discretion of the  
114 court. Justices of the peace shall have concurrent juris-  
115 diction with the circuit court, and any other courts hav-  
116 ing criminal jurisdiction in their county, for the trial of  
117 all misdemeanors arising under this article.



## CHAPTER 133

(Senate Bill No. 230—By Mr. Eddy)

AN ACT to amend and reenact sections seventeen, twenty-four, twenty-eight, twenty-nine, thirty-four and thirty-six, article four, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the collection and enforcement of property taxes, including the redemption of forfeited, and delinquent lands and the sale of forfeited, delinquent, escheated, and waste and unappropriated lands for the benefit of the school fund.

[Passed March 5, 1949; in effect from passage. Approved by the Governor.]

### Article 4. Sale of Lands for School Fund.

#### Section

17. Compensation of deputy commissioner; court costs.
24. Sale by deputy commissioner; receipt for purchase price; report to circuit court.
28. Right of former owner to surplus proceeds.
29. Right of creditor of former owner of escheated land.
34. Redemption by persons under disability.
36. Sheriff to keep proceeds in separate accounts; disposition.

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

That sections seventeen, twenty-four, twenty-eight, twenty-nine, thirty-four and thirty-six, article four, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

- Section 17. *Compensation of Deputy Commissioner;*
- 2 *Court Costs.*—As compensation for his services, the deputy
  - 3 commissioner shall be entitled to an attorney's fee of ten
  - 4 dollars for each item included in the suit and the one dol-
  - 5 lar fee provided for in a former law for each tract certified
  - 6 to the circuit court of his county prior to March 8, 1947.
  - 7 In addition thereto he shall receive a commission of ten
  - 8 per cent on each sale or redemption. Such commission on
  - 9 sales shall be based on the sale price and in the case of
  - 10 redemption on the total taxes and interest due. Such
  - 11 compensation shall be collected from the redeмпtor as
  - 12 provided for in section eighteen of this article. Such com-
  - 13 pensation, together with a charge of one dollar payable

14 to the clerk of the circuit court for each item in the suit,  
15 shall be taxed to the state as part of its costs in the suit  
16 and shall be paid as hereinafter provided. Except as other-  
17 wise provided in this article, no other costs shall be  
18 taxed.

Sec. 24. *Sale by Deputy Commissioner; Receipt for*  
2 *Purchase Price; Report to Circuit Court.*—On the day  
3 fixed by order of the court the deputy commissioner shall  
4 sell, in the manner specified in the notice of sale, each  
5 unredeemed item included in the published list of lands  
6 to be sold. If the sale is not completed on that day, it shall  
7 be continued from day to day until all the land has been  
8 offered for sale. If in respect to any land no bid is made,  
9 the deputy commissioner shall report the fact to the court,  
10 and the court may order that such land be sold at a subse-  
11 quent sale with or without additional advertising.

12 For the purpose of receiving the proceeds of the sale, it  
13 shall be the duty of the sheriff or one of his deputies to  
14 attend all sales conducted by the deputy commissioner  
15 in his county. The sheriff or deputy shall issue to the  
16 purchaser a receipt for the purchase money. The auditor  
17 may prescribe the form of the receipt.

18 The deputy commissioner shall prepare a report for the  
19 circuit court which shall show what was done with respect  
20 to all lands ordered to be sold. The report shall state as  
21 to each item whether it was redeemed before sale or was  
22 sold, and the name of the purchaser and the amount of  
23 his bid. The report shall, within thirty days after the  
24 sale, be filed with the clerk of the circuit court.

Sec. 28. *Right of Former Owner to Surplus Proceeds.*—  
2 The former owner of any forfeited or delinquent lands,  
3 his heirs or assigns, shall be entitled to the surplus  
4 received from the sale over and above the taxes and in-  
5 terest charged or chargeable thereon including all court  
6 costs in the suit in which such land was sold, if his, or  
7 their claim be filed in the circuit court that decreed the  
8 sale, within two years after the date of confirmation of  
9 said sale. If no claim is filed with the court within the  
10 two years, then such surplus shall be paid by the sheriff  
11 to the auditor for credit to the general school fund.

2     *Sec. 29. Right of Creditor of Former Owner of Escheat-*  
3     *ed Land.*—Any surplus proceeds arising from the sale of  
4     escheated land, after the payment of all court costs in the  
5     suit in which such land was sold, may be applied for by  
6     the creditors of the decedent if application is made to the  
7     circuit court that decreed the sale within one year after  
8     the date of confirmation of said sale. Upon proper appli-  
9     cation to the court within such time such surplus may be  
10    applied to the satisfaction of the claims of creditors of the  
11    decedent who had a lien on the land at the time of his  
12    death, or who, being general creditors, have properly  
13    proved their claims against his estate and have been  
14    unable to obtain payment out of the personalty. In the  
15    disposition of such surplus, due preference shall be given  
16    to lien creditors. Any part of such surplus thereafter re-  
17    maining shall be paid by the sheriff to the auditor for  
   credit to the general school fund.

2     *Sec. 34. Redemption by Persons Under Disability.*—In  
3     addition to and notwithstanding any other provisions of  
4     this article, any infant or insane person, the former owner  
5     of any delinquent land which during such disability was  
6     sold as provided in this article, may redeem such land  
7     from the purchaser, his heirs or assigns, at any time be-  
8     fore the expiration of one year after removal of the dis-  
9     ability but in no event more than twenty years after the  
10    sale was confirmed, by paying such an amount as is re-  
11    quired for redemption under the provisions of section  
12    thirty-five, article three of this chapter.

13    Any forfeited land, or any interest therein sold under  
14    the provisions of this article owned at the time of the  
15    forfeiture by an infant, married woman or insane person,  
16    may be redeemed by such owner until the expiration of  
17    three years after the removal of such disability as is pro-  
18    vided in section six, article thirteen of the constitution of  
19    this state, provided such right to redeem shall in no case  
20    extend beyond twenty years from the time such land was  
   forfeited.

2     *Sec. 36 Sheriff to Keep Proceeds in Separate Accounts;*  
3     *Disposition.*—The sheriff shall keep in a separate fund the  
   proceeds of all redemptions and sales paid to him under

4 the provisions of this article, and shall keep a separate  
5 account of the proceeds of the sales and redemptions of  
6 all lands included in each suit. Out of the total proceeds  
7 of each suit he shall in the order of priority stated below  
8 credit the following amounts, for payment as herein-  
9 after provided: (1) To the clerk of the circuit court, such  
10 part of the court costs taxed in the suit as represents the  
11 publication charges incurred under the provisions of sec-  
12 tions twelve and twenty-three of this article, and the  
13 charge of one dollar per item provided for in section sev-  
14 enteen of this article. (2) To the sheriff, such part of the  
15 court costs taxed in the suit as represents the fees due him  
16 under the provisions of section twelve of this article. (3)  
17 To the deputy commissioner, such part of the court costs  
18 as represents compensation due him under the provisions  
19 of section seventeen of this article. (4) To the auditor,  
20 such part as represents any charges which were paid by  
21 or which are payable to him. (5) To the general county  
22 fund, such part as represents costs paid out of such fund  
23 for publishing the sheriff's delinquent and sales list. (6)  
24 Surplus proceeds from the sale of delinquent, forfeited  
25 and escheated lands shall be held by the sheriff for the  
26 periods provided for in sections twenty-eight and twenty-  
27 nine of this article, and if no application is made to the  
28 circuit court within the time therein specified, such sur-  
29 plus shall be paid to the auditor for credit to the general  
30 school fund. (7) To the auditor for credit to the general  
31 school fund, such part as represents all taxes and inter-  
32 est chargeable in respect to any forfeited lands, and all  
33 surplus proceeds of the sale of any waste and unappropri-  
34 ated lands.

35 The balance, if any, of the proceeds of the lands included  
36 in each suit shall be prorated among the various taxing  
37 units on the basis of the total amount of taxes due them in  
38 respect to the lands that were sold or redeemed. The  
39 amounts so determined shall be credited as follows, for  
40 payment as hereinafter provided: (1) To the auditor,  
41 such part as represents state taxes and interest. (2) To  
42 the fund kept by the sheriff for each local taxing unit,  
43 such part as represents taxes and interest payable to such  
44 unit.

45 All amounts which under the provisions of this section  
46 were so credited by the sheriff to the clerk of the circuit  
47 court, to the sheriff, and to the deputy commissioner shall  
48 be paid to them quarterly; those credited to the auditor  
49 shall be paid to him semi-annually; and those credited to  
50 the various local taxing units shall be transferred semi-  
51 annually by the sheriff to the fund kept by him for each  
52 such taxing unit.

53 The tax commissioner, in cooperation with the land de-  
54 partment in the auditor's office, shall prescribe the form  
55 of the records to be kept by the sheriff for the purposes of  
56 this section, and the method to be used by him in making  
57 the necessary pro rata distributions.

## CHAPTER 134

(Senate Bill No. 276—By Mr. Eddy)

AN ACT to amend and reenact sections twelve and thirty-six, article four, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the collection and enforcement of property taxes, including the redemption of forfeited and delinquent lands, and the sale of forfeited, delinquent, escheated, and waste and unappropriated lands for the benefit of the school fund.

[Passed March 11, 1949; in effect from passage. Approved by the Governor.]

### Article 4. Sale of Lands for School Fund.

#### Section

12. Service of process by publication.

36. Sheriff to keep proceeds in separate accounts; disposition.

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

That sections twelve and thirty-six, article four, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 12. *Service of Process by Publication.*—Upon  
2 the institution of a suit as provided in section ten of this

3 article, the clerk of the circuit court shall enter an order  
4 of publication, without the filing of any affidavit by the  
5 deputy commissioner as required in other cases. Such or-  
6 der of publication shall give the style of the suit, as, State  
7 of West Virginia v. A. B., *et al.*; shall state that the object  
8 of the suit is to obtain a decree of the circuit court order-  
9 ing the sale for the benefit of the school fund of all lands  
10 included in the suit; shall list all such lands, setting forth  
11 as to each item its local description, the former owner in  
12 whose name the land was forfeited, or was returned de-  
13 linquent and sold, or escheated, as the case may be, and  
14 the names of such other defendants as may be interested  
15 therein; and shall require all the named defendants, and  
16 all unknown parties who are or may be interested in any  
17 of the lands included in the suit to appear within one  
18 month after the date of the first publication thereof and  
19 do what is necessary to protect their interests.

20 The order shall be published once a week for three suc-  
21 cessive weeks in two newspapers of opposite politics pub-  
22 lished in the county, if such there be; otherwise, this re-  
23 quirement shall be satisfied by such publication in any  
24 one newspaper published in the county, and if no news-  
25 paper is published in the county, or if none therein will  
26 publish the order at the legal rate or for the time required,  
27 then in such newspaper of general circulation in the  
28 county as the clerk of the court in which the cause is  
29 pending may direct. The costs of such publication shall  
30 be at the rate provided for in section thirty-four, article  
31 one, chapter fifty-nine of this code, shall be charged  
32 ratably to each item listed in the suit, and shall be taxed  
33 to the state as part of its costs in the suit and paid as here-  
34 inafter provided.

35 In view of the fact that the state has absolute title to all  
36 forfeited land, to all land sold to the state for nonpayment  
37 of taxes and become irredeemable, to all escheated land,  
38 and to all waste and unappropriated land, and must under  
39 the constitution have such an absolute title before the  
40 land may be sold for the benefit of the school fund; and  
41 in view of the fact that the former owner of any such  
42 land, or any person claiming under him, has no further  
43 interest therein nor rights in respect thereto except such

44 privilege of redemption as may be extended to him by the  
45 Legislature as an act of grace; and in view of the further  
46 fact that all parties known and unknown who may claim  
47 an interest in any of the lands included in the suit are  
48 given notice thereof by the order of publication provided  
49 for above; therefore, the Legislature deems it both ex-  
50 pedient and necessary to provide that failure to name any  
51 such person as a defendant shall in no wise affect the  
52 validity of any of the proceedings in the suit for the sale  
53 of the state's title to such land; and in view of the fact  
54 that the supreme court of appeals in a decision just ren-  
55 dered has held that there is no constitutional requirement  
56 that the former owner or any other interested person be  
57 personally served with process in a suit for the sale  
58 for the benefit of the school fund of lands that are and  
59 must be the absolute property of the state; and in view  
60 of the further fact that in its last previous enactment of  
61 this section the Legislature had no intention of requiring  
62 that personal service of process on named defendants in  
63 such a suit should be a mandatory condition precedent to  
64 the validity of any step or proceeding in such suit, but on  
65 the contrary expressly stated that failure to serve the  
66 summons on any named defendant should in no wise  
67 affect the validity thereof; now therefore, the Legislature  
68 also deems it both expedient and necessary to provide  
69 that the failure to obtain such personal service on any  
70 named defendant in any suit instituted under the provi-  
71 sions of this article prior to the effective date hereof shall  
72 in no way affect the validity of any step or proceeding  
73 in any such suit or the validity of the title acquired by the  
74 purchaser of land sold under any decree made or to be  
75 made in any such suit.

Sec. 36. *Sheriff to Keep Proceeds in Separate Accounts;*  
2 *Disposition.*—The sheriff shall keep in a separate fund the  
3 proceeds of all redemptions and sales paid to him under  
4 the provisions of this article, and shall keep a separate  
5 account of the proceeds of the sales and redemptions of  
6 all lands included in each suit. Out of the total proceeds  
7 of each suit he shall in the order of priority stated below  
8 credit the following amounts, for payment as hereinafter

9 provided: (1) To the clerk of the circuit court, such part  
10 of the court costs taxed in the suit as represents the pub-  
11 lication charges incurred under the provisions of sections  
12 twelve and twenty-three of this article, and the charge of  
13 one dollar per item provided for in section seventeen of  
14 this article. (2) To the deputy commissioner, such part  
15 of the court costs as represents compensation due him  
16 under the provisions of section seventeen of this article.  
17 (3) To the auditor, such part as represents any charges  
18 which were paid by or which are payable to him. (4) To  
19 the general county fund, such part as represents costs  
20 paid out of such fund for publishing the sheriff's delin-  
21 quent and sales list. (5) Surplus proceeds from the sale  
22 of delinquent, forfeited and escheated lands shall be held  
23 by the sheriff for the periods provided for in sections  
24 twenty-eight and twenty-nine of this article, and if no  
25 application is made to the circuit court within the time  
26 therein specified, such surplus shall be paid to the auditor  
27 for credit to the general school fund. (6) To the auditor  
28 for credit to the general school fund, such part as repre-  
29 sents all taxes and interest chargeable in respect to any  
30 forfeited lands, and all surplus proceeds of the sale of any  
31 waste and unappropriated lands.

32 The balance, if any, of the proceeds of the lands included  
33 in each suit shall be prorated among the various taxing  
34 units on the basis of the total amount of taxes due them  
35 in respect to the lands that were sold or redeemed. The  
36 amounts so determined shall be credited as follows, for  
37 payment as hereinafter provided: (1) To the auditor,  
38 such part as represents state taxes and interest. (2) To  
39 the fund kept by the sheriff for each local taxing unit,  
40 such part as represents taxes and interest payable to such  
41 unit.

42 All amounts which under the provisions of this section  
43 were so credited by the sheriff to the clerk of the circuit  
44 court and to the deputy commissioner shall be paid to  
45 them quarterly; those credited to the auditor shall be  
46 paid to him semi-annually; and those credited to the  
47 various local taxing units shall be transferred semi-an-  
48 nually by the sheriff to the fund kept by him for each  
49 such taxing unit.



50 The tax commissioner, in cooperation with the land de-  
51 partment in the auditor's office, shall prescribe the form  
52 of the records to be kept by the sheriff for the purposes of  
53 this section, and the method to be used by him in making  
54 the necessary pro rata distributions.

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## CHAPTER 135

(Senate Bill No. 124—By Mr. Johnston, Mr. President)

AN ACT to amend and reenact sections three, four, five and seven, article one; sections one, six and seventeen, article two; section one, article three; sections seven, ten, ten-a, ten-b, seventeen and nineteen, article five; sections four, nine, ten and eleven, article six; sections eight, nine, ten, fifteen and seventeen, article seven; sections one and five, article eight; sections one, three, five-a and eight, article nine; section ten, article ten; to add section four-a to article five, 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, as amended, relating to unemployment compensation.

[Passed February 25, 1949; in effect June 30, 1949. Approved by the Governor]

### Article

1. Department of Employment Security.
2. The Director of Employment Security.
3. Advisory Council.
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.
7. Claim Procedure.
8. Unemployment Compensation Fund.
9. Employment Security Administration Funds.
10. General Provisions.

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

That sections three, four, five and seven, article one; sections one, six and seventeen, article two; section one, article three; sections seven, ten, ten-a, ten-b, seventeen and nineteen, article five; sections four, nine, ten and eleven, article six; sections

eight, nine, ten, fifteen and seventeen, article seven; sections one and five, article eight; sections one, three, five-a and eight, article nine; section ten, article ten; to add section four-a to article five, 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, as amended, be amended and reenacted to read as follows:

### **Article 1. Department of Employment Security.**

#### **Section**

3. Definitions.
4. Department of employment security.
5. Federal-state cooperation.
7. Employment agencies transfer.

Section 3. *Definitions.*—As used in this chapter, unless the context clearly requires otherwise:

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

“Annual payroll” means the total amount of wages for employment paid by an employer during a twelve month period ending with June thirty of any calendar year.

“Average annual payroll” means the average of the last three annual payrolls of an employer.

“Base period” means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual’s benefit year.

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

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

“Benefit year” with respect to an individual means the one year period beginning with the day on which he filed a valid claim for benefits, and thereafter the one year period beginning with the day on which such individual next files a valid claim for benefits after the termination of his last preceding benefit year. An initial claim for benefits filed in accordance with the provisions of this chapter shall be deemed to be a valid claim within the

28 purposes of this definition if the individual has been paid  
29 wages in his base period sufficient to make him eligible  
30 for benefits under the provisions of this chapter.

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

33 "Board" means board of review.

34 "Calendar quarter" means the period of three consecu-  
35 tive calendar months ending on March thirty-one, June  
36 thirty, September thirty, or December thirty-one, or the  
37 equivalent thereof as the director may by regulation  
38 prescribe.

39 "Computation date" means June thirty of the year im-  
40 mediately preceding the January one, on which an em-  
41 ployer's contribution rate becomes effective.

42 "Director" means the employment security director.

43 "Employing unit" means an individual, or type of or-  
44 ganization, including any partnership, association, trust,  
45 estate, joint stock company, insurance company, corpora-  
46 tion (domestic or foreign), or the receiver, trustee in  
47 bankruptcy, trustee or successor thereof, or the legal  
48 representative of a deceased person, which has on Janu-  
49 ary first, one thousand nine hundred thirty-five, or sub-  
50 sequent thereto, had in its employ one or more individuals  
51 performing service within this state.

52 "Employer" means an employing unit which for some  
53 portion of a day, not necessarily simultaneously, in each  
54 of twenty different calendar weeks, which weeks need not  
55 be consecutive, within either the current calendar year,  
56 or the preceding calendar year, has had in employment  
57 eight or more individuals irrespective of whether the  
58 same individuals were or were not employed on each of  
59 such days, or who or which is or becomes a liable employer  
60 under any federal unemployment tax act.

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

63 (1) Service, including service in interstate commerce,  
64 performed for wages or under any contract of hire, writ-  
65 ten or oral, express or implied.

66 (2) The term "employment" shall include an individ-  
67 ual's entire service, performed within or both within and  
68 without this state if: (a) The service is localized in this

69 state; or (b) the service is not localized in any state but  
70 some of the service is performed in this state and (i) the  
71 base of operations, or, if there is no base of operations,  
72 then the place from which such service is directed or con-  
73 trolled, is in this state; or (ii) the base of operations or  
74 place from which such service is directed or controlled is  
75 not in any state in which some part of the service is per-  
76 formed but the individual's residence is in this state.

77 (3) Service not covered under paragraph two of this sub-  
78 section and performed entirely without this state, with re-  
79 spect to no part of which contributions are required and  
80 paid under an unemployment compensation law of any  
81 other state or of the federal government, shall be deemed  
82 to be employment subject to this chapter if the individual  
83 performing such services is a resident of this state and the  
84 director approves the election of the employing unit for  
85 whom such services are performed that the entire service  
86 of such individual shall be deemed to be employment  
87 subject to this chapter.

88 (4) Service shall be deemed to be localized within a  
89 state, if: (a) The service is performed entirely within such  
90 state; or (b) the service is performed both within and  
91 without such state; or (c) the service is performed both  
92 within or without such state, but the service performed  
93 without such state is incidental to the individual's service  
94 within this state. For example, is temporary or transitory  
95 in nature or consists of isolated transactions.

96 (5) Services performed by an individual for wages shall  
97 be deemed to be employment subject to this chapter unless  
98 and until it is shown to the satisfaction of the director that:  
99 (a) Such individual has been and will continue to be free  
100 from control or direction over the performance of such  
101 services, both under his contract of service and in fact; and  
102 (b) such service is either outside the usual course of the  
103 business for which such service is performed or that such  
104 service is performed outside of all the places of business of  
105 the enterprise for which such service is performed; and (c)  
106 such individual is customarily engaged in an independent-  
107 ly established trade, occupation, profession or business.

108 (6) All service performed by an officer or member of the  
109 crew of an American vessel (as defined in section three

110 hundred five of an act of Congress entitled "Social Security  
111 ty Act Amendment of 1946," approved August tenth, one  
112 thousand nine hundred forty-six) on or in connection with  
113 such vessel, provided that the operating office, from which  
114 the operations of such vessel operating on navigable wa-  
115 ters within or within and without the United States is or-  
116 dinarily and regularly supervised, managed, directed and  
117 controlled, is within this state.

118 The term "employment" shall not include:

119 (1) Services performed in the employ of this state or any  
120 political subdivision thereof, or any instrumentality of  
121 this state or its subdivisions.

122 (2) Service performed directly in the employ of an-  
123 other state, or its political subdivisions.

124 (3) Service performed in the employ of the United States  
125 or an instrumentality of the United States exempt under  
126 the constitution of the United States from the payments  
127 imposed by this law, except that to the extent that the Con-  
128 gress of the United States shall permit states to require any  
129 instrumentalities of the United States to make payments  
130 into an unemployment fund under a state unemployment  
131 compensation law, all of the provisions of this law shall be  
132 applicable to such instrumentalities, and to service per-  
133 formed for such instrumentalities, in the same manner, to  
134 the same extent and on the same terms as to all other em-  
135 ployers, employing units, individuals, and services: *Pro-*  
136 *vided*, That if this state shall not be certified for any year  
137 by the social security administration under section one  
138 thousand six hundred three (c) of the federal internal rev-  
139 enue code, the payments required of such instrumental-  
140 ities with respect to such year shall be refunded by the di-  
141 rector from the fund in the same manner and within the  
142 same period as is provided in section nineteen of article  
143 five of this chapter with respect to payments erroneously  
144 collected.

145 (4) Service performed after June thirty, one thousand  
146 nine hundred thirty-nine, with respect to which unem-  
147 ployment compensation is payable under the railroad un-  
148 employment insurance act (fifty-two stat. one thousand  
149 ninety-four), and service with respect to which unemploy-  
150 ment benefits are payable under an unemployment com-

151 pension system for maritime employees established by  
152 an act of Congress. The director may enter into agree-  
153 ments with the proper agency established under such an  
154 act of Congress to provide reciprocal treatment to individ-  
155 uals who, after acquiring potential rights to unemploy-  
156 ment compensation under an act of Congress, or who have,  
157 after acquiring potential rights to unemployment compen-  
158 sation under an act of Congress, acquired rights to benefit  
159 under this chapter. Such agreements shall become effec-  
160 tive ten days after such publications as complies with the  
161 general rules of the department.

162 (5) Agricultural labor.

163 (6) Domestic service in a private home.

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

166 (8) Service performed by a child under the age of  
167 twenty-one years in the employ of his father or mother.

168 (9) Service performed in the employ of an employing  
169 unit organized and operated exclusively for religious,  
170 charitable, scientific, literary, or educational purposes or  
171 for prevention of cruelty to children or animals, no part of  
172 the net earnings of which inure to the benefit of any  
173 private shareholder or individual.

174 (10) Service as an officer or member of a crew of an  
175 American vessel performed on or in connection with such  
176 vessel, if the operating office, from which the operations of  
177 the vessel operating on navigable water within or without  
178 the United States are ordinarily and regularly supervised,  
179 managed, directed and controlled, is without this state.

180 Notwithstanding the foregoing exclusions from the defi-  
181 nition of "employment," services, except agricultural la-  
182 bor and domestic service in a private home, shall be  
183 deemed to be in employment if with respect to such serv-  
184 ices a tax is required to be paid under any federal law im-  
185 posing a tax against which credit may be taken for con-  
186 tributions required to be paid into a state unemployment  
187 compensation fund.

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

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

194 "Payments" means the money required to be paid or  
195 that may be voluntarily paid into the state unemploy-  
196 ment compensation fund as provided in article five of this  
197 chapter.

198 "Separated from employment" means, for the purposes  
199 of this chapter, the total severance whether by quitting,  
200 discharge, or otherwise, of the employer-employee rela-  
201 tionship.

202 "State" includes, in addition to the states of the United  
203 States, Alaska, Hawaii, and the District of Columbia.

204 "Total and partial unemployment":

205 (1) An individual shall be deemed totally unemployed  
206 in any week in which such individual is separated from  
207 employment for an employing unit and during which he  
208 performs no services and with respect to which no wages  
209 are payable to him.

210 (2) An individual who has not been separated from  
211 employment shall be deemed to be partially unemployed  
212 in any week in which due to lack of work he performs no  
213 services and with respect to which no wages are payable  
214 to him, or in any week in which due to lack of full time  
215 work wages payable to him are less than his weekly bene-  
216 fit amount plus six dollars.

217 "Wages" means all remuneration for personal service,  
218 including commissions and bonuses and the cash value of  
219 all remuneration in any medium other than cash: *Pro-*  
220 *vided*, That the term "wages" shall not include:

221 (1) That part of the remuneration which, after remun-  
222 eration equal to three thousand dollars has been paid to an  
223 individual by an employer with respect to employment  
224 during any calendar year, is paid after December thirty-  
225 one, one thousand nine hundred thirty-nine, and prior to  
226 January one, one thousand nine hundred forty-seven, to  
227 such individual by such employer with respect to employ-  
228 ment during such calendar year; or that part of the remun-  
229 eration which, after remuneration equal to three thousand  
230 dollars with respect to employment after one thousand  
231 nine hundred thirty-eight has been paid to an individual by  
232 an employer during any calendar year after one thousand

233 nine hundred forty-six, is paid to such individual by such  
234 employer during such calendar year, except that for the  
235 purposes of sections one, ten, eleven, and thirteen of ar-  
236 ticle six of this chapter, all remuneration earned by an in-  
237 dividual in employment shall be credited to the individual  
238 and included in his computation of base period wages; and  
239 provided, that the remuneration paid to an individual by  
240 an employer with respect to employment in another state  
241 or other states upon which contributions were required of  
242 and paid by such employer under an unemployment com-  
243 pensation law of such other state or states shall be included  
244 as a part of the remuneration equal to three thousand dol-  
245 lars herein referred to.

246 (2) The amount of any payment made to, or on behalf  
247 of, an individual in its employ (without deduction from  
248 the remuneration of the individual in its employ), under  
249 a plan or system established by an employer which makes  
250 provision for individuals in its employ generally or for a  
251 class or classes of such individuals (including any amount  
252 paid by an employer for insurance or annuities, or into a  
253 fund, to provide for any such payment), on account of (A)  
254 retirement or (B) sickness or accident disability, or (C)  
255 medical and hospitalization expenses in connection with  
256 sickness or accident disability, or (D) death: *Provided*,  
257 That the individual in its employ (i) has not the option to  
258 receive, instead of provision for such death benefit, any  
259 part of such payment or if such death benefit is insured,  
260 any part of the premiums (or contributions to premiums)  
261 paid by his employer, and (ii) has not the right, under the  
262 provisions of the plan or system or policy of insurance pro-  
263 viding for such death benefit, to assign such benefit, or to  
264 receive such consideration in lieu of such benefit, either  
265 upon his withdrawal from the plan or system providing for  
266 such benefit or upon termination of such plan or system or  
267 policy or of insurance of his services with such employer.

268 (3) The payment by an employer (without deduction  
269 from the remuneration of the individual in its employ) of  
270 the tax imposed upon an individual in its employ under  
271 section one thousand four hundred of the federal internal  
272 revenue code; or

273 (4) Payments, not required under any contract of hire,



274 made to an individual with respect to his period of train-  
275 ing or service in the armed forces of the United States by  
276 any employer by which such individual was formerly  
277 employed.

278 Gratuities customarily received by an individual in the  
279 course of his employment from persons other than his  
280 employing unit shall be treated as wages paid by his em-  
281 ploying unit, if accounted for and reported to such em-  
282 ploying unit.

283 The reasonable cash value of remuneration in any med-  
284 ium other than cash shall be estimated and determined  
285 in accordance with rules prescribed by the director.

286 "Week" means a calendar week, ending at midnight  
287 Saturday, or the equivalent thereof, as determined in ac-  
288 cordance with the regulations prescribed by the director.

289 "Weekly benefit rate" means the maximum amount of  
290 benefit an eligible individual will receive for one week  
291 of total unemployment.

292 "Year" means a calendar year or the equivalent thereof,  
293 as determined by the director.

Sec. 4. *Department of Employment Security.*—There  
2 is created a department of employment security, com-  
3 posed of a division of unemployment compensation and  
4 a division of employment service, and such other divisions  
5 or units as the director determines to be necessary.

Sec. 5. *Federal-State Cooperation.*—The department  
2 shall cooperate with the social security administration of  
3 the federal government, similar agencies of the several  
4 states, and such other agencies as are concerned with the  
5 problem of employment security and public assistance  
6 and relief.

Sec. 7. *Employment Agencies Transfer.*—The "State  
2 Public Employment Agency" now maintained in the de-  
3 partment of labor shall be transferred on January one,  
4 one thousand nine hundred thirty-seven, and shall be  
5 made the state employment service division of the de-  
6 partment of employment security.

## Article 2. The Director of Employment Security.

### Section

#### 1. Appointment.

6. Powers and duties.
17. Federal-state cooperation.

Section 1. *Appointment.*—The department shall be in charge of a director of employment security. The director shall be appointed by the governor, by and with the advice and consent of the senate, for a term of six years and shall hold his office subject to the will and pleasure of the governor.

Sec. 6. *Powers and Duties.*—The director shall be the executive and administrative head of the department and shall have the power and duty, to:

- (1) Exercise general supervision of and make regulations for the government of the department.
- (2) Prescribe uniform rules pertaining to investigations, departmental hearings, and promulgate rules and regulations.
- (3) Supervise fiscal affairs and responsibilities of the department.
- (4) Prescribe the qualifications of, appoint, remove, and fix the compensation of the officers and employees of the department, subject to the provisions of section ten, article four of this chapter, relating to the board of review.
- (5) Organize and administer the department so as to comply with the requirements of this chapter and to satisfy any conditions established in applicable federal legislation.
- (6) Make reports in such form and containing such information as the federal social security administration may from time to time require, and comply with such provisions as the federal social security administration may from time to time find necessary to assure the correctness and verification of such reports.
- (7) Make available to any agency of the United States charged with the administration of public works or assistance through public employment, upon its request, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of the recipient's rights to further compensation under this chapter.

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

38 (9) Sign and execute in the name of the state, by "The  
39 State Department of Employment Security," any con-  
40 tract or agreement with the federal government, its agen-  
41 cies, other states, their subdivisions, or private persons.

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

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

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

49 (13) Invoke any legal, equitable or special remedy for  
50 the enforcement of orders or the provisions of this chapter.

51 (14) Exercise any other power necessary to standard-  
52 ize administration, expedite departmental business, as-  
53 sure the establishment of fair rules and regulations and  
54 promote the efficiency of the service.

Sec. 17. *Federal-State Cooperation.*—The director shall  
2 have all powers and duties necessary to secure to the state  
3 the benefits of congressional action for the promotion and  
4 maintenance of a system of public employment offices.  
5 To this end the provisions of the act referred to in the  
6 preceding section and such additional congressional action  
7 consistent with the above act are accepted by the state  
8 and the state pledges its observance and compliance there-  
9 with.

10 The department of employment security is designated  
11 the agent of this state for the purpose of compliance with  
12 the act of congress entitled "An act to provide for the es-  
13 tablishment of a national employment system and for  
14 cooperation with states in the promotion of such systems,  
15 and for other purposes," approved June six, one thousand  
16 nine hundred thirty-three, as amended.

17 The director is also authorized, with the approval of  
18 the advisory council. to apply for an advance to the un-

19 employment compensation fund in accordance with the  
20 conditions specified in title twelve of the social security  
21 act, as amended, in order to secure to this state and its  
22 citizens the advantages available under the provisions of  
23 that title.

### Article 3. Advisory Council.

#### Section

##### 1. Creation.

Section 1. *Creation.*—There is hereby created in the  
2 department of employment security a "State Advisory  
3 Council" composed of six members.

### Article 5. Employer Coverage and Responsibility.

#### Section

##### 4-a. Voluntary payments.

##### 7. Separate accounts.

##### 10. Experience ratings; decreased rates.

##### 10-a. Suspension of decreased rates.

##### 10-b. Transfer of business.

##### 17. Interest on past-due payments.

##### 19. Refunds.

Sec. 4-a. *Voluntary Payments.*—An employer may make  
2 voluntary payments under such regulations as the di-  
3 rector may prescribe, in addition to the required pay-  
4 ments, and such voluntary payments shall be credited  
5 to the employer's account in the same manner and under  
6 the same conditions as the required payments. Any pay-  
7 ment so made shall not be considered a prepayment of  
8 any future payment required nor can such payment be  
9 refunded under any condition.

Sec. 7. *Separate Accounts.*—(1) The director shall  
2 maintain a separate account for each employer, and shall  
3 credit his account with all contributions heretofore and  
4 hereafter paid by him. Nothing in this chapter shall be  
5 construed to grant any employer or individual in his  
6 service prior claims or rights to the amounts paid by  
7 him into the fund, either on his own behalf or on behalf  
8 of such individuals. The account of any employer which  
9 has been inactive for a period of four consecutive cal-  
10 endar years shall be terminated for all purposes.

11 (2) Benefits paid to an eligible individual for total or  
12 partial unemployment occurring in any benefit year be-

13 ginning after June thirty, one thousand nine hundred  
14 forty-nine, shall be charged to the account of the last em-  
15 ployer with whom he has had as much as three weeks of  
16 continuous employment: *Provided*, That no employer's  
17 account will be charged with benefits paid to any indi-  
18 vidual who has been separated from noncovered employ-  
19 ment in which he was employed as much as three weeks.

20 (3) The director shall, for the year one thousand nine  
21 hundred forty-eight, and for each calendar year thereafter,  
22 classify employers in accordance with their actual experi-  
23 ence in the payment of contributions on their own behalf  
24 and with respect to benefits charged against their ac-  
25 counts, with a view of fixing such contribution rates as  
26 will reflect such experience. For the purpose of fixing  
27 such contribution rates for each calendar year, the books  
28 of the department shall be closed on July thirty-one of  
29 the preceding calendar year, and any contributions there-  
30 after paid, as well as benefits thereafter paid with respect  
31 to compensable weeks ending on or before June thirty of  
32 the preceding calendar year, shall not be taken into ac-  
33 count until the next annual date for fixing contribution  
34 rates: *Provided, however*, That if an employer has failed  
35 to furnish to the director on or before July thirty-one of  
36 such preceding calendar year the wage information for  
37 all past periods necessary for the computation of the con-  
38 tribution rate such employer's rate shall be two and seven-  
39 tenths per cent: *Provided further*, That any payment  
40 made or any information necessary for the computation  
41 of a reduced rate furnished on or before the termination  
42 of an extension of time for such payment or reporting of  
43 such information granted pursuant to a regulation of the  
44 director authorizing such extension, shall be taken into  
45 account for the purposes of fixing contribution rates:  
46 *Provided further*, That when the time for filing any re-  
47 port or making any payment required hereunder falls on  
48 Saturday, Sunday, or a legal holiday the due date shall  
49 be deemed to be the next succeeding business day: *Pro-*  
50 *vided further*, That whenever through mistake or in-  
51 advertence erroneous credits or charges are found to  
52 have been made to or against the reserve account of  
53 any employer, the rate shall be adjusted as of January

54 one of the calendar year in which such mistake or  
55 inadvertence is discovered; but payments made under  
56 any rate assigned prior to January one of such year shall  
57 not be deemed to be erroneously collected.

Sec. 10. *Experience Ratings; Decreased Rates.*—On  
2 and after January one, one thousand nine hundred forty-  
3 eight, after the requirements of section nine have been  
4 complied with, an employer's payment shall remain two  
5 and seven-tenths per cent until: (1) There have elapsed  
6 thirty-six consecutive months immediately preceding  
7 the computation date throughout which an employer's  
8 account was chargeable with benefits.

9 (2) His payments credited to his account for all past  
10 years exceed the benefits charged to his account by an  
11 amount equal to at least five and one-half per cent of  
12 his average annual pay roll, in which case his rate shall  
13 be two and four-tenths per cent.

14 (3) His payments credited to his account for all past  
15 years exceed the benefits charged to his account by an  
16 amount equal to at least six and one-half per cent of  
17 his average annual pay roll, in which case his rate shall  
18 be two and one-tenth per cent.

19 (4) His payments credited to his account for all past  
20 years exceed the benefits charged to his account  
21 by an amount equal to at least seven and one-half  
22 per cent of his average annual pay roll, in which  
23 case his rate shall be one and eight-tenths per cent.

24 (5) His payments credited to his account for all past  
25 years exceed the benefits charged to his account by an  
26 amount equal to at least eight and one-half per cent of  
27 his average annual pay roll, in which case his rate shall  
28 be one and four-tenths per cent.

29 (6) His payments credited to his account for all past  
30 years exceed the benefits charged to his account by an  
31 amount equal to at least nine per cent of his average  
32 annual pay roll, in which case his rate shall be one and  
33 two-tenths per cent.

34 (7) His payments credited to his account for all past  
35 years exceed the benefits charged to his account by an  
36 amount equal to at least ten per cent of his average

37 annual pay roll, in which case his rate shall be nine-  
38 tenths of one per cent.

39 (8) His payments credited to his account for all past  
40 years exceed the benefits charged to his account by an  
41 amount equal to at least eleven per cent of his average  
42 annual pay roll, in which case his rate shall be seven-  
43 tenths of one per cent.

44 (9) His payments credited to his account for all past  
45 years exceed the benefits charged to his account by an  
46 amount equal to at least twelve per cent of his average  
47 annual pay roll, in which case his rate shall be five-tenths  
48 of one per cent.

49 (10) His payments credited to his account for all past  
50 years exceed the benefits charged to his account by an  
51 amount equal to at least thirteen per cent of his average  
52 annual pay roll, in which case his rate shall be three-  
53 tenths of one per cent.

54 (11) His payments credited to his account for all past  
55 years exceed the benefits charged to his account by an  
56 amount equal to at least thirteen and five-tenths per  
57 cent of his average annual pay roll, in which case his  
58 rate shall be one-tenth of one per cent.

59 (12) His payments credited to his account for all past  
60 years exceed the benefits charged to his account by an  
61 amount equal to at least fourteen per cent of his average  
62 annual pay roll, in which case his rate shall be zero.

63 The director shall determine an employer's compli-  
64 ance with these requirements.

65 After the director is satisfied that an employer has  
66 complied with these requirements he shall decrease  
67 the employer's rate to the next lower rate if the fund,  
68 including the trust fund, clearing account, and benefit  
69 account, is as much as eighty million dollars on the  
70 computation date, and shall decrease the employer's rate  
71 one additional step if the fund is as much as ninety  
72 million dollars on the computation date, and shall de-  
73 crease the employer's rate one additional step for each  
74 five million dollars that the fund is above ninety million  
75 dollars up to and including one hundred fifteen million  
76 dollars on the computation date.

Sec. 10-a. *Suspension of Decreased Rates.*—(1) If at any time or times the unemployment compensation fund, including the trust fund, clearing account, and benefit account, falls below the sum of fifty million dollars, the director shall, effective at the commencement of the next calendar quarter, suspend the decreased rates as provided in this chapter, and all contributions of employers due thereafter shall be paid at the rate of two and seven-tenths per cent.

(2) As of January first of the year next following the date on which the unemployment compensation fund, including the trust fund, clearing account, and benefit account, reaches the sum of fifty-five million dollars, the director shall supersede such suspension.

Sec. 10-b. *Transfer of Business.*—If a subject employer shall transfer his entire organization, trade or business, or substantially all the assets thereof, to another employer, the director shall combine the contribution records and the benefit experience records of the transferring and acquiring employers. The acquiring employer's contribution rate for the remainder of the calendar year shall not be affected by the transfer but such rate shall apply to the whole of his business, including the portion acquired by the transfer, through the following December thirty-first. If a subject employer shall make such transfer to an employing unit which is not an employer on the date of the transfer, such subject employer's rate shall continue as the rate of the acquiring employing unit until the next effective rate date. If an employing unit acquires simultaneously the entire organization, trade or business, or substantially all the assets thereof, of two or more covered employers, the successor shall be assigned as a contribution rate the then current rate of the transferring employer which had, in the calendar quarter immediately preceding the date of the transfer, the higher or highest pay roll. As to any transfers which occur prior to July thirty-first of the current calendar year such rate shall remain effective for the balance of that calendar year: *Provided, however,* That if the transfers occur subsequent to July



27 thirty-first such rate shall remain effective for the bal-  
28 ance of that calendar year and the rate for the suc-  
29 ceeding calendar year shall, notwithstanding anything  
30 to the contrary provided in section seven of article five  
31 of this chapter, be recomputed on the basis of the com-  
32 bined experience of the transferring employers as of  
33 July thirty-first of the year in which the transfers occur.  
34 In case the transferring employer is delinquent in the  
35 payment of contributions or interest thereon the ac-  
36 quiring employer shall not be entitled to any benefit of  
37 the contribution record of the transferring employer  
38 unless payment of such delinquent contributions and  
39 interest thereon is assumed by the acquiring employer.  
40 The director shall upon joint request of the transferor  
41 and transferee furnish the transferee a statement of the  
42 amount of any contribution and interest due and unpaid  
43 by the transferor. A statement so furnished shall be con-  
44 trolling for the purposes of the foregoing proviso.

Sec. 17. *Interest on Past-due Payments.*—Payments un-  
2 paid on the date on which due and payable, as prescribed  
3 by the director, shall bear interest at the rate of one per  
4 cent per month until payment plus accrued interest is  
5 received by the director.

6 Interest collected pursuant to this section shall be paid  
7 into the employment security special administration  
8 fund.

Sec. 19. *Refunds.*—Within two years after the date on  
2 which payment of contribution, or interest thereon, is  
3 made, an employer, who has paid such payment or in-  
4 terest, may make application for:

5 (1) An adjustment thereof in connection with subse-  
6 quent payments.

7 (2) A refund thereof if adjustment cannot be made.

8 If the director determines that payments and interest  
9 were erroneously collected, he shall make the adjust-  
10 ment, without interest, in connection with subsequent  
11 payments of the employer, or if such adjustment can-  
12 not be made, refund the amount of the payments er-  
13 roneously collected, without interest, from the clearing  
14 account of the unemployment compensation fund, and

15 the amount of the interest erroneously collected, from  
16 the employment security special administration fund.

17 For like cause and within the same period the director,  
18 on his own initiative, may make an adjustment or refund:  
19 *Provided*, That nothing in this chapter shall be construed  
20 as permitting a cash refund of any contribution required  
21 under the law in effect when such contribution became  
22 due.

### Article 6. Employee Eligibility; Benefits.

#### Section

4. Disqualification for benefits.
9. Place of payment.
10. Benefit rate; total unemployment.
11. Benefit rate; partial unemployment.

Section 4. *Disqualification for Benefits.*—Upon the de-  
2 termination of the facts by the director, an individual  
3 shall be disqualified for benefits:

4 (1) For the week in which he left his most recent  
5 work voluntarily without good cause involving fault on  
6 the part of the employer and the six weeks immediately  
7 following such week. Such disqualification shall carry a  
8 reduction in the maximum benefit amount equal to six  
9 times the individual's weekly benefit rate. However,  
10 if the claimant returns to work in covered employment  
11 during his benefit year the maximum benefit amount shall  
12 be increased by the amount of the decrease imposed un-  
13 der the disqualification.

14 (2) For the week in which he was discharged by his  
15 last employing unit for misconduct and the six weeks  
16 immediately following such week. Such disqualifica-  
17 tion shall carry a reduction in the maximum benefit  
18 amount equal to six times the individual's weekly bene-  
19 fit rate. However, if the claimant returns to work in  
20 covered employment during his benefit year the maxi-  
21 mum benefit amount shall be increased by the amount  
22 of the decrease imposed under the disqualification.

23 (3) For the week in which he failed without good  
24 cause, to apply for available suitable work, accept suit-  
25 able work when offered, or return to his customary self-  
26 employment when directed to do so by the director, and  
27 for the four weeks which immediately follow and for

28 such an additional period as any offer of suitable work  
29 shall continue open for his acceptance, and his maximum  
30 benefit amount shall be reduced by an amount equal to  
31 his weekly benefit rate times the number of weeks of  
32 disqualification. However, if the claimant returns to  
33 work in covered employment during his benefit year  
34 the maximum benefit amount shall be increased by the  
35 amount of the decrease imposed under the disquali-  
36 fication.

37 (4) For a week in which his total or partial unemploy-  
38 ment is due to a stoppage of work which exists because  
39 of a labor dispute at the factory, establishment, or other  
40 premises at which he was last employed, unless the di-  
41 rector is satisfied that he was not (one) participating,  
42 financing, or directly interested in such dispute, and  
43 (two) did not belong to a grade or class of workers  
44 who were participating, financing, or directly interested  
45 in the labor dispute which resulted in the stoppage of  
46 work. No disqualification under this sub-section shall  
47 be imposed if the employees are required to accept  
48 wages, hours or conditions of employment substantially  
49 less favorable than those prevailing for similar work  
50 in the locality, or if employees are denied the right of  
51 collective bargaining under generally prevailing con-  
52 ditions, or if an employer shuts down his plant or opera-  
53 tion or dismisses his employees in order to force wage  
54 reduction, changes in hours or working conditions.

55 (5) For a week with respect to which he is receiving  
56 or has received:

57 (a) Wages in lieu of notice or payments under any  
58 form of a separation wage plan.

59 (b) Compensation for temporary total disability under  
60 the workmen's compensation law of any state or under  
61 a similar law of the United States.

62 (c) Remuneration in the form of a primary insurance  
63 benefit under title two of the social security act, as  
64 amended, or similar payments under any act of congress,  
65 from and after receipt by him of his first payment for  
66 such benefits.

67 (d) Unemployment compensation benefits under the  
68 laws of the United States or any other state.

69 (6) For the week in which an individual is not  
70 employed because of pregnancy, or has voluntarily  
71 quit employment to marry or to perform any marital,  
72 parental or family duty, or to attend to his or her  
73 personal business or affairs, and until the individual  
74 returns to covered employment and has been em-  
75 ployed in covered employment at least thirty working  
76 days.

77 (7) For each week in which an individual is unem-  
78 ployed because, having voluntarily left employment to  
79 attend a school, college, university, or other educational  
80 institution, he is attending such school, college, uni-  
81 versity, or other educational institution, or is awaiting  
82 entrance thereto or is awaiting the starting of a new  
83 term or session thereof.

84 (8) For each week in which he is unemployed because  
85 of his request or that of his duly authorized agent for a  
86 vacation period at a specified time that would leave the  
87 employer no other alternative but to suspend opera-  
88 tions.

89 (9) For the purposes of this section an employer's ac-  
90 count shall not be charged under any of the following  
91 conditions: (1) When benefits are paid without any  
92 disqualification to an individual who has left his most  
93 recent work for good cause not involving fault on the  
94 part of the employer. (2) When benefits are paid for  
95 unemployment immediately after the expiration of a  
96 period of disqualification for (a) leaving work volun-  
97 tarily without good cause involving fault on the part of  
98 the employer, (b) discharge for misconduct, (c) failing  
99 without good cause to apply for available suitable work,  
100 accept suitable work when offered, or return to his cus-  
101 tomary self-employment when directed to do so by the  
102 director.

Sec. 9. *Place of Payment.*—Benefits shall be paid  
2 through employment offices or, if the director by rules so  
3 prescribes, through employment security offices, in ac-  
4 cordance with such regulations as the director shall pre-  
5 scribe.

Sec. 10. *Benefit Rate; Total Unemployment.*—Each

2 eligible individual who is totally unemployed in any  
 3 week shall be paid benefits with respect to that week at  
 4 the weekly rate appearing in column (C) in table A in  
 5 this paragraph, on the line on which in column (A) there  
 6 is indicated the employee's wage class, except as other-  
 7 wise provided under the term "total and partial un-  
 8 employment" in section three, article one of this chapter.  
 9 The employee's wage class shall be determined by his  
 10 base period wages as shown in column (B) in table A.  
 11 The right of an employee to receive benefits shall not  
 12 be prejudiced nor the amount thereof be diminished by  
 13 reason of failure by an employer to pay either the wages  
 14 earned by the employee or the contribution due on such  
 15 wages. An individual who is totally unemployed but  
 16 earns in excess of six dollars as a result of odd job or  
 17 subsidiary work in any benefit week shall be paid bene-  
 18 fits for such week in accordance with the provisions of  
 19 this chapter pertaining to benefits for partial unemploy-  
 20 ment. The provisions of sections ten and eleven of this  
 21 article shall apply to all benefit weeks occurring in  
 22 benefit years beginning after the effective date of this  
 23 act; for benefit weeks occurring in benefit years prior  
 24 thereto the provisions then in effect shall apply.

TABLE A

26	Wage	Wages in	Weekly	Maximum
27	Class	Base Period	Benefit Rate	Benefit in
28	(Col. A)	(Col. B)	(Col. C)	Benefit Year for
29				Total and/or
30		Under \$ 300.00	Ineligible	Partial
31	1	\$ 300.00- \$ 399.99	\$ 8.00	Unemployment
32	2	400.00- 499.99	9.00	(Col. D)
33	3	500.00- 599.99	10.00	Amount
34	4	600.00- 699.99	11.00	
35	5	700.00- 799.99	12.00	
36	6	800.00- 899.99	13.00	
37	7	900.00- 999.99	14.00	
38	8	1000.00- 1149.99	15.00	
39	9	1150.00- 1299.99	16.00	
40	10	1300.00- 1449.99	17.00	
41	11	1450.00- 1599.99	18.00	
42	12	1600.00- 1749.99	19.00	
	13	1750.00- 1899.99	20.00	

43	14	1900.00- 2049.99	21.00	483.00
44	15	2050.00- 2199.99	22.00	506.00
45	16	2200.00- 2349.99	23.00	529.00
46	17	2350.00- 2499.99	24.00	552.00
47	18	2500.00 and over	25.00	575.00

Sec. 11. *Benefit Rate; Partial Unemployment.*—An  
 2 eligible individual who is partially unemployed in any  
 3 week shall upon claim therefor filed within such time and  
 4 in such manner as the director may by regulation pre-  
 5 scribe, be paid benefits for such partial unemployment  
 6 in an amount equal to his weekly benefit rate, as deter-  
 7 mined in accordance with section ten of this article, less  
 8 that part of wages from any source payable to him with  
 9 respect to such week which is in excess of six dollars:  
 10 *Provided*, That such amount of benefits if not a multiple  
 11 of one dollar shall be computed to the next higher multi-  
 12 ple of one dollar. Such partial benefits shall be paid to  
 13 such individual for the week for which he is claiming  
 14 benefits without regard to the provisions of subsections  
 15 one and four of section one of this article.

## Article 7. Claim Procedure.

### Section

8. Appeal from deputy's decision.
9. Finality of examiner's decision.
10. Board of review.
15. Report of decision.
17. Finality of board's decision.

Section 8. *Appeal from Deputy's Decision.*—A claim-  
 2 ant, last employer, or other interested party, may file an  
 3 appeal from the decision of the deputy within eight  
 4 calendar days after notice of the decision has been de-  
 5 livered or mailed by registered mail to the claimant  
 6 and last employer as provided in section four of this  
 7 article. The period within which an appeal from the  
 8 decision of the deputy may be filed shall be stated in  
 9 such notice. The decision of the deputy shall be final  
 10 and benefits shall be paid or denied in accordance there-  
 11 with unless an appeal is filed within such time.

12 Upon appeal from the determination of a deputy, an  
 13 individual shall be entitled to a fair hearing and rea-  
 14 sonable opportunity to be heard before an appeal tri-  
 15 bunal as provided in section seven of this article.

16 Within eight days after receipt by the board of notice  
17 of appeal from the decision of a deputy, the board shall  
18 fix the time and place for hearing such appeal, and  
19 notify the claimant, last employer, and the director, ten  
20 days in advance of the date set for hearing.

21 Upon consideration of all evidence the appeal tribunal  
22 shall make a decision within twenty-one days after the  
23 date of the hearing and shall notify the claimant, last  
24 employer, and the director of its findings and decision.

Sec. 9. *Finality of Examiner's Decision.*—A claimant,  
2 last employer, or other interested party may file an ap-  
3 peal to the board from the decision of an appeal tribunal  
4 within eight calendar days after notice of the decision  
5 has been delivered or mailed to the claimant and last  
6 employer as provided in section eight of this article. The  
7 director shall of necessity be deemed an interested party.  
8 The decision of the appeal tribunal shall be final and  
9 benefits shall be paid or denied in accordance therewith  
10 unless an appeal is filed within such time.

Sec. 10. *Board of Review.*—The board may, after no-  
2 tice to the claimant, last employer, and the director,  
3 eight days in advance of the date set for hearing:

4 (1) On its own motion affirm, modify, or set aside a  
5 decision of an appeal tribunal;

6 (2) Direct the taking of additional evidence in a dis-  
7 puted claim;

8 (3) Permit parties to the decision of an appeal tri-  
9 bunal to initiate further appeals before it;

10 (4) Where it deems necessary in the interest of any  
11 party that additional testimony be taken, refer a case on  
12 its own motion or at the request of any party to a trial  
13 examiner for the expeditious taking of such additional  
14 testimony; but no such referral shall be made at the re-  
15 quest of any party except for good cause shown: *Pro-*  
16 *vided further,* That where all parties are present at the  
17 hearing such additional testimony may be taken before  
18 the board.

Sec. 15. *Report of Decision.*—The board shall, within  
2 fifteen days after the conclusion of the hearing, notify

3 the claimant, last employer, and the director of its find-  
4 ings and decision on an appeal.

Sec. 17. *Finality of Board's Decision.*—The decision of  
2 the board shall be final and benefits shall be paid or  
3 denied in accordance therewith, unless a claimant, last  
4 employer, or other interested party appeals to a court  
5 within thirty days after mailing of notification of the  
6 board's decision.

### Article 8. Unemployment Compensation Fund.

#### Section

1. Establishment.
5. Clearing account.

Section 1. *Establishment.*—There is hereby established  
2 as a special fund, separate and apart from all public  
3 moneys or funds of the state, an unemployment com-  
4 pensation fund. The fund shall consist of:

- 5 (1) All payments collected under this chapter.
- 6 (2) Interest earned upon money in the fund.
- 7 (3) Property or securities acquired through the use  
8 of the fund.
- 9 (4) Earnings of such property or securities.
- 10 (5) Amounts transferred from the employment se-  
11 curity special administration fund.
- 12 (6) Any moneys received from the federal unemploy-  
13 ment account in the unemployment trust fund in ac-  
14 cordance with title twelve of the Social Security Act,  
15 as amended.
- 16 All money in the fund shall be mingled and undivided.

Sec. 5. *Clearing Account.*—Upon the receipt of pay-  
2 ments and other moneys payable into the fund under  
3 this chapter, the director shall immediately deposit them  
4 in the clearing account. Refunds payable under section  
5 nineteen, article five, of payments erroneously collected,  
6 shall be made from the clearing account. Such refunds  
7 shall be made upon warrants issued by the director. In-  
8 terest collected on delinquent payments shall be paid out  
9 of the clearing account, upon warrants issued by the  
10 director, into the state treasury to be credited to the em-  
11 ployment security special administration fund.



**Article 9. Employment Security Administration Funds.****Section**

1. Administration fund.
3. Contents of fund.
- 5-a. Special administration fund.
8. Reimbursement of fund.

Section 1. *Administration Fund.*—There is hereby created in the state treasury a special fund to be known as the employment security administration fund. All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by this state for the purposes described in section seven of this article shall be expended solely for the purposes and in the amounts found necessary by the Social Security Administration for the proper and efficient administration of this chapter.

- Sec. 3. *Contents of Fund.*—The fund shall consist of:
- (1) Moneys appropriated by the state.
  - (2) Moneys received from the United States or any agency thereof, including the Social Security Administration and the United States Employment Service.
  - (3) Moneys received from any other source.

Sec. 5-a. *Special Administration Fund.*—There is hereby created in the state treasury a fund to be known as the employment security special administration fund, which shall consist of interest collected on delinquent payments pursuant to section seventeen of article five of this chapter. The moneys deposited with this fund are hereby appropriated and made available to the order of the director for the purpose of (a) replacements in the employment security administration fund as provided in section eight of this article, (b) to meet special, extraordinary, and contingent expenses not provided for in the employment security administration fund, and (c) refunds pursuant to section nineteen of article five, of interest erroneously collected. This fund shall be administered and disbursed in the same manner and under the same conditions as other special funds of the state treasury. Balances to the credit of the special administration fund shall not lapse at any time but shall be continuously available to the director for expenditures

20 consistent with this chapter: *Provided*, (1) That not  
21 more than twelve thousand five hundred dollars shall be  
22 expended from said fund in any fiscal year for purposes  
23 (a) and (b); (2) that at the beginning of each calendar  
24 quarter the director shall estimate the amount that may  
25 be required in that quarter for refunds of interest er-  
26 roneously collected; (3) that thereupon the excess, if  
27 any, over the amounts provided to be expended under  
28 this section shall be paid into the unemployment com-  
29 pensation trust fund.

Sec. 8. *Reimbursement of Fund.*—If any moneys re-  
2 ceived after June thirty, one thousand nine hundred  
3 forty-one, from the social security administration under  
4 title three of the social security act, or any unemcum-  
5 bered balances in the employment security administra-  
6 tion fund as of that date, or any moneys granted after  
7 that date to this state pursuant to the provisions of the  
8 Wagner-Peyser Act, or any moneys made available by  
9 this state or its political subdivisions and matched by  
10 such moneys granted to this state pursuant to the pro-  
11 visions of the Wagner-Peyser Act, are found by the  
12 social security administration, because of any action or  
13 contingency, to have been lost or been expended for  
14 purposes other than, or in amounts in excess of, those  
15 found necessary by the social security administration for  
16 the proper administration of this law, it is the policy of  
17 this state that such moneys shall be replaced by moneys  
18 appropriated for such purpose from the general funds  
19 of this state to the employment security administration  
20 fund for expenditure as provided by the unemployment  
21 compensation law. Upon receipt of notice of such a finding  
22 by the social security administration, the director shall  
23 promptly report the amount required for such replace-  
24 ment to the governor and the governor shall, at the  
25 earliest opportunity, submit to the Legislature a request  
26 for the appropriation of such amount. This article shall  
27 not be construed to relieve this state of its obligation with  
28 respect to funds received prior to July one, one thousand  
29 nine hundred forty-one, pursuant to the provisions of  
30 title three of the Social Security Act.

**Article 10. General Provisions.****Section**

## 10. General penalty.

Section 10. *General Penalty.*—A person who wilfully  
2 violates a provision of this chapter or rule or regulation  
3 thereunder for which a specific penalty has not been  
4 imposed shall be guilty of a misdemeanor and upon con-  
5 viction shall be fined not less than twenty dollars nor  
6 more than two hundred dollars, or be imprisoned for not  
7 longer than thirty days, or both. Each day such viola-  
8 tion continues shall be a separate offense.

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## CHAPTER 136

(House Bill No. 203—By Mr. Speaker, Mr. Flannery)

AN ACT to amend and reenact sections eleven and seventeen, article one; to amend and reenact section five, article two, and to amend article two by adding thereto a new section, to be designated section six-a; to amend and reenact sections one, two, three, four, six, six-a, eight, nine, ten, fourteen, fifteen, fifteen-b and sixteen, article four, and to amend article four by adding thereto four new sections, to be designated sections eight-d, eight-e, eight-f and fifteen-c; and to amend and reenact section five, article five; all of chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and all relating to workmen's compensation and its administration.

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[Passed March 10, 1949; in effect July 1, 1949. Approved by 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 eleven and seventeen, article one, be amended and reenacted; that section five, article two be amended and

reenacted, and that a new section, to be designated section six-a be added to article two; that sections one, two, three, four, six, six-a, eight, nine, ten, fourteen, fifteen, fifteen-b and sixteen, article four, be amended and reenacted, and that four new sections, to be designated sections eight-d, eight-e, eight-f and fifteen-c, be added to article four; and that section five, article five be amended and reenacted; all of chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and all to read as follows:

## CHAPTER 23. WORKMEN'S COMPENSATION

### Article 1. General Administrative Provisions.

#### Section

11. Depositions.

17. Annual report by commissioner to governor.

Section 11. *Depositions.*—In an investigation, the commissioner may cause depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions as provided for transcripts in the circuit court, but such depositions shall be upon reasonable notice to claimant and employer or their respective attorneys. The commissioner shall also have discretion to accept and consider depositions taken within or without the state by either the claimant or employer, provided due and reasonable notice of the taking of such depositions was given to the other party, claimant or employer, as the case may be, or his attorney: *Provided, however,* That the commissioner, upon due notice both to the employer and claimant, shall have authority to refuse or permit the taking of such depositions or to reject such depositions after the taking thereof, if in his opinion they were taken at such place or under such circumstances as imposed an undue burden or hardship upon the opposite party, and the commissioner's discretion to accept, refuse to approve, or reject such depositions shall be binding in the absence of abuse of such discretion.

Sec. 17. *Annual Report by Commissioner to Governor.*—

Annually, on or about the fifteenth day of September in each year, the commissioner, under oath, shall make a

4 report as of the thirtieth day of June to the governor,  
5 which shall include a statement of the number of awards  
6 made by him, a general statement of the causes of the  
7 injuries for which the awards were made, a detailed  
8 statement of all disbursements, and the condition of the  
9 fund, together with any other matters which the com-  
10 missioner deems it proper to call to the attention of  
11 the governor, including any recommendations he may  
12 have to make.

## **Article 2. Employers and Employees Subject to Chapter; Premiums.**

### **Section**

5. Premiums; failure to pay; reinstatement; deposit to insure payment; refund of deposit; notices to employees.  
6-a. Exemption from liability of officers, managers, agents, representatives or employees of contributing employers.

Section 5. *Premiums; Failure to Pay; Reinstatement; Deposit to Insure Payment; Refund of Deposit; Notices to Employees.*—For the purpose of creating a workmen's compensation fund each employer subject to this chapter shall pay the premiums of liabilities based upon and being such a percentage of the payroll of such employer as may have been determined by the commissioner and be then in effect. The premiums shall be paid quarterly on or before the twentieth day of the next succeeding month for the preceding quarter, and shall be the prescribed percentage of the total earnings of all employees within the meaning of this chapter, for such preceding quarter. The minimum premium to be paid by any employer for any quarter shall be one dollar and fifty cents. The premiums and deposits provided for in this chapter shall be paid by the employers to the state compensation commissioner, who shall issue receipts for all sums so received, mailing the original to the person, firm or corporation paying the same, transmitting a copy thereof to the state treasurer and state auditor, and retaining a copy for his own records. All sums received by the state compensation commissioner as herein provided shall be deposited in the state treasury to the credit of the workmen's compensation fund in the manner now prescribed by law for depositing money in

26 the state treasury. Each employer shall make a pay-  
27 roll report to the commissioner for each quarter as  
28 heretofore specified, and such report shall be on the form  
29 or forms prescribed by the commissioner, and furnish  
30 all information required by him.

31 Failure to pay premiums as herein provided or to  
32 make the quarterly payroll reports required by the  
33 commissioner shall deprive the employer so delinquent  
34 of the benefits and protection afforded by this chapter,  
35 and shall automatically terminate the election of such  
36 employer to pay into the workmen's compensation fund  
37 as herein provided, and such employer shall be liable  
38 to his employees as provided in section eight of this ar-  
39 ticle; and the commissioner shall not be required to  
40 notify the delinquent employer of such termination, but  
41 he shall notify the employees of such employer by writ-  
42 ten notice posted as hereinafter provided for in this sec-  
43 tion. The termination of election of such delinquent em-  
44 ployer shall date from twelve o'clock p. m., of the last  
45 day of the month in which he fails to pay the premiums  
46 or make payroll reports, as above provided, for the pre-  
47 ceding quarter.

48 The employer so delinquent may be reinstated upon  
49 application under such terms as are prescribed by this  
50 chapter and by the commissioner hereunder, after the  
51 payment into the workmen's compensation fund of all  
52 unpaid premiums, penalties and charges. Such reinstate-  
53 ment shall be in effect from and after the date that the  
54 new application is accepted by the commissioner: *Pro-*  
55 *vided, however,* That such delinquent employer shall  
56 be entitled to the benefits and protection of this chapter  
57 until twelve o'clock p. m. of the last day of the month  
58 immediately succeeding the month in which his election  
59 is terminated, and his employees shall be entitled to  
60 compensation for injuries received during such period,  
61 but not thereafter unless such delinquent employer be-  
62 comes reinstated as herein provided.

63 Any employer hereafter electing to avail himself of  
64 the benefits of this chapter shall at the time of making  
65 application to the commissioner deposit in the workmen's

66 compensation fund an amount estimated to be equal  
67 to the amount of the premium which shall be paid by  
68 him for the next succeeding quarter. Any employer  
69 whose deposit is less than the amount of his premium  
70 for the last quarter shall, upon written request from  
71 the commissioner mailed to his address as carried upon  
72 the books of the commissioner by twelve o'clock p. m.  
73 of the twentieth of the month in which request is mailed,  
74 pay to the commissioner a sum sufficient to make his  
75 deposit at least equal to the amount of his premium for  
76 the last preceding quarter, and failure of any employer  
77 to comply with such written request within the time  
78 specified shall deprive him of the benefits and protection  
79 afforded by this chapter, and shall automatically ter-  
80 minate his election to pay into the workmen's compen-  
81 sation fund as herein provided, and such employer shall  
82 be liable to his employees as provided in section eight of  
83 this article; and the commissioner shall not be required  
84 to notify the delinquent employer of such termination,  
85 but he shall notify the employees of such employer by  
86 written notice posted as hereafter provided for in this  
87 section. The termination of election of such employer  
88 shall date from twelve o'clock p. m. of the last day of  
89 the month in which he is notified by the commissioner  
90 that his deposit is not equal to the sum of his premium  
91 for the last preceding quarter. Such employer may be  
92 reinstated upon application under such terms as are  
93 prescribed by this chapter and the rules of the commis-  
94 sioner. The deposit hereinbefore described shall be cred-  
95 ited to the employer's account on the books of the com-  
96 missioner and used to pay premiums and any other sums  
97 due the fund when such employer becomes delinquent  
98 in the payment of the same.

99 Upon withdrawal from the fund or termination of  
100 election of any employer, he shall be refunded the bal-  
101 ance due him of his deposit, after deducting all amounts  
102 owed by him to the workmen's compensation fund, and  
103 the commissioner shall notify the employees of such  
104 employer of said termination in such manner as he may  
105 deem best and sufficient.

106 Notices to employees in this section provided for shall  
107 be given by posting written notice that the employer is  
108 delinquent under the compensatioin law of West Vir-  
109 ginia, and that neither the employer nor the employees  
110 of such employer are protected by said law as to any  
111 injury or death sustained after the date specified in said  
112 notice. Such notice shall be in the form prescribed by  
113 the commissioner and shall be posted in a conspicuous  
114 place at the chief works of the employer, as the same  
115 appear in records of the commissioner. If the said chief  
116 works of the employer cannot be found or identified,  
117 then said notices shall be posted at the front door of  
118 the court house of the county in which said chief works  
119 are located, according to the records in the commis-  
120 sioner's office. Any person who shall, prior to the re-  
121 instatement of the said employer, as hereinbefore pro-  
122 vided for, or prior to sixty days after the posting of said  
123 notice, whichever shall first occur, remove, deface or  
124 render illegible the said notice shall be guilty of a mis-  
125 demeanor, and upon conviction thereof, shall be fined  
126 not to exceed five hundred dollars, and the said notice  
127 shall state this provision upon its face. The commis-  
128 sioner may require any sheriff, deputy sheriff, constable,  
129 or other official of the state of West Virginia, who may  
130 be authorized to serve civil process, to post such notice  
131 and to make return thereof of the fact of such posting  
132 to the commissioner, and any failure of such officer to  
133 post any notice within ten days after he shall have re-  
134 ceived the same from the commissioner, without just  
135 cause or excuse, shall constitute a willful failure or re-  
136 fusals to perform a duty required of him by law within  
137 the meaning of section twenty-eight, article five, chapter  
138 sixty-one of the code of West Virginia. Any person ac-  
139 tually injured by reason of such failure shall have an  
140 action against said official, and upon any official bond  
141 he may have given, for such damages as such person  
142 may actually have incurred, but not to exceed, in  
143 the case, of any surety upon said bond, the amount of  
144 the penalty of said bond. Any official posting said notice  
145 as herein required shall be entitled to the same fee as is



146 now or may hereafter be provided for the service of  
147 process in suits instituted in courts of record in the state  
148 of West Virginia, which fee shall be paid by the com-  
149 missioner out of any funds at his disposal, but shall be  
150 charged by him against the account of the employer to  
151 whose delinquency such notice relates.

Sec. 6-a. *Exemption from Liability of Officers, Man-  
2 agers, Agents, Representatives or Employees of Contrib-  
3 uting Employers.*—The immunity from liability set out  
4 in the preceding section shall extend to every officer,  
5 manager, agent, representative or employee of such em-  
6 ployer when he is acting in furtherance of the employer's  
7 business and does not inflict an injury with deliberate  
8 intention.

#### Article 4. Disability and Death Benefits.

##### Section

1. To whom compensation fund disbursed; silicosis and other occupational diseases included in "injury" and "personal injury"; definition of silicosis and other occupational diseases.
2. Disbursement where injury is self-inflicted or intentionally caused by employer; rules and safety appliances; "wilfull self-exposure" defined.
3. Disbursements for medicine, hospital treatment, artificial limbs and other appliances; contract by employer with hospital prohibited.
4. Funeral expenses.
6. Classification of disability benefits.
- 6-a. Stages of silicosis; benefits and mode of payment to employees and dependents.
8. Physical examination of claimant; expenses.
- 8-d. Occupational diseases medical board created; qualifications; term of office; duties; remuneration.
- 8-e. Occupational diseases medical board; procedure; autopsy.
- 8-f. Occupational diseases medical board; reports and distribution thereof, findings required of board; objection to findings; procedure thereon.
9. Physical and vocational rehabilitation.
10. Classification of death benefits; "dependent" defined.
14. Computation of benefits.
15. Application for benefits.
- 15-b. Nonmedical questions determined by the commissioner in silicosis cases; hearing.
- 15-c. Nonmedical questions determined by commissioner on hearing of claim for occupational diseases other than silicosis.
16. Commissioner's jurisdiction over case continuous; modification of finding or order; time limitation on awards.

Section 1. *To Whom Compensation Fund Disbursed;  
2 Silicosis and Other Occupational Diseases Included in*

3 *"Injury" and "Personal Injury"; Definition of Silicosis and*  
4 *Other Occupational Diseases.*—Subject to the provisions  
5 and limitations elsewhere in this chapter set forth, the  
6 commissioner shall disburse the workmen's compensation  
7 fund to the employees of such employers as are not de-  
8 linquent in the payment of premiums for the quarter in  
9 which the injury occurs, and in case of catastrophe, in  
10 addition to the employees next above described, to the  
11 employees of employers who have elected, under section  
12 nine, article two of this chapter, to make payments into  
13 the surplus fund as provided in that section, and which  
14 employees shall have received personal injuries in the  
15 course of and resulting from their employment in this  
16 state, or in temporary employment without the state as  
17 provided in section one, article two of this chapter, or to  
18 the dependents, if any, of such employees in case death  
19 has ensued, according to the provisions hereinafter made;  
20 and also for the expenses of the administration of this  
21 chapter, as provided in section two, article one of this  
22 chapter.

23 For the purposes of this chapter the terms "injury" and  
24 "personal injury" shall be extended to include silicosis  
25 and any other occupational disease as hereinafter defined,  
26 and the commissioner shall likewise disburse the work-  
27 men's compensation fund to the employees of such em-  
28 ployers as are not delinquent in the payment of premiums  
29 for the last quarter in which such employees have been  
30 exposed to the hazard of silicon dioxide dust or to any  
31 other occupational hazard, and have contracted silicosis  
32 or other occupational disease, or have suffered a percep-  
33 tible aggravation of an existing silicosis, in this state in  
34 the course of and resulting from their employment, or to  
35 the dependents, if any, of such employees, in case death  
36 has ensued, according to the provisions hereinafter made:  
37 *Provided, however,* That compensation shall not be pay-  
38 able for the disease of silicosis, or death resulting there-  
39 from, unless in the state of West Virginia the employee  
40 has been exposed to the hazard of silicon dioxide dust  
41 over a continuous period of not less than two years during  
42 the ten years immediately preceding the date of his last

43 exposure to such hazards. An application for benefits on  
44 account of silicosis shall set forth the name of the employ-  
45 er or employers and the time worked for each, and the  
46 commissioner may allocate to and divide any charges on  
47 account of such claim among the employers by whom the  
48 claimant was employed for as much as sixty days during  
49 the period of two years immediately preceding the filing  
50 of the application. The allocation shall be based upon the  
51 time and degree of exposure with each employer.

52 For the purpose of this chapter silicosis is defined as  
53 an insidious fibrotic disease of the lung or lungs due to  
54 the prolonged inhalation and accumulation, sustained in  
55 the course of and resulting from employment, of minute  
56 particles of dust containing silicon dioxide ( $\text{SiO}_2$ ) over  
57 such a period of time and in such amounts as result in  
58 the substitution of fibrous tissues for normal lung tissues,  
59 whether or not accompanied by tuberculosis of the lungs.

60 Wherever the expression "injurious exposure to silicon  
61 dioxide dust", or "injurious exposure to silicon dioxide  
62 dust in harmful quantities", or "exposure to the hazard  
63 of silicon dioxide dust", or any similar language shall ap-  
64 pear in this chapter, such expression shall be construed  
65 to mean the exposure of an employee in the course of his  
66 employment to a working condition in which the air con-  
67 tains such a concentration of silicon dioxide dust that the  
68 breathing of such air by a person over a long period of  
69 time would be likely to cause him to contract the disease  
70 of silicosis.

71 For the purpose of this chapter, occupational disease  
72 means a disease incurred in the course of and resulting  
73 from employment. No ordinary disease of life to which  
74 the general public is exposed outside of the employment  
75 shall be compensable except when it follows as an inci-  
76 dent of occupational disease as defined in this chapter.  
77 Except in the case of silicosis, a disease shall be deemed  
78 to have been incurred in the course of or to have resulted  
79 from the employment only if it is apparent to the rational  
80 mind, upon consideration of all the circumstance (1) that  
81 there is a direct casual connection between the conditions  
82 under which work is performed and the occupational dis-

83 ease, (2) that it can be seen to have followed as a natural  
84 incident of the work as a result of the exposure occasioned  
85 by the nature of the employment, (3) that it can be fairly  
86 traced to the employment as the proximate cause, (4) that  
87 it does not come from a hazard to which workmen would  
88 have been equally exposed outside of the employment, (5)  
89 that it is incidental and peculiar to the character of the bus-  
90 iness and not independent of the relation of employer and  
91 employee, and (6) that it must appear to have had its ori-  
92 gin in a risk connected with the employment and to have  
93 flowed from that source as a natural consequence, though  
94 it need not have been foreseen or expected before its  
95 contraction.

96 Except in the case of silicosis, no award shall be made  
97 under the provisions of this chapter for any occupational  
98 disease contracted prior to the first day of July, one thou-  
99 sand nine hundred forty-nine. An employee shall be  
100 deemed to have contracted an occupational disease within  
101 the meaning of this paragraph if the disease or condition  
102 has developed to such an extent that it can be diagnosed  
103 as an occupational disease. In every hearing before the  
104 commissioner in this regard, the burden shall be on the  
105 claimant to prove that prior to such date the employee  
106 had not contracted the occupational disease for which  
107 compensation is sought.

Sec. 2. *Disbursement Where Injury is Self-Inflicted or*  
2 *Intentionally Caused by Employer; Rules and Safety Ap-*  
3 *pliances; "Willful Self-Exposure" Defined.*—Notwithstand-  
4 ing anything hereinbefore or hereinafter contained, no  
5 employee or dependent of any employee shall be entitled  
6 to receive any sum from the workmen's compensation  
7 fund, or to direct compensation from any employer mak-  
8 ing the election and receiving the permission mentioned  
9 in section nine, article two of this chapter, or otherwise  
10 under the provisions of this chapter, on account of any  
11 personal injury to or death of any employee caused by a  
12 self-inflicted injury, willful misconduct, willful disobe-  
13 dience to such rules and regulations as may be adopted  
14 by the employer and approved by the commissioner of

15 labor or chief of the department of mines, and which  
16 rules and regulations have been and are kept posted  
17 in conspicuous places in and about the work, willful self-  
18 exposure in case of silicosis or other occupational disease,  
19 as defined herein, or the intoxication of such employee,  
20 or the failure of such employee to use or make use of any  
21 protective or safety appliance or appliances prescribed  
22 by the commissioner and furnished by the employer for  
23 the use of or applicable to such employee. For the pur-  
24 pose of this chapter, the commissioner may cooperate  
25 with the state department of mines and the state depart-  
26 ment of labor in promoting general safety programs and  
27 in formulating rules and regulations to govern hazardous  
28 employments. If injury or death result to any employee  
29 from the deliberate intention of his employer to produce  
30 such injury or death, the employee, the widow, widower,  
31 child or dependent of the employee shall have the priv-  
32 ilege to take under this chapter, and shall also have cause  
33 of action against the employer, as if this chapter had not  
34 been enacted, for any excess of damages over the amount  
35 received or receivable under this chapter.

36 As used in this section the term "willful self-exposure"  
37 causing the contraction of the disease of silicosis or other  
38 occupational disease shall also include: (1) Failure or  
39 omission on the part of an employee truthfully to state  
40 to the best of his knowledge, in answer to inquiry made  
41 by the employer, the place, duration and nature of pre-  
42 vious employment; (2) Failure or omission on the part  
43 of an employee truthfully to furnish, to the best of his  
44 knowledge, in answer to an inquiry made by the em-  
45 ployer, full information as to the previous state of his  
46 health, as to exposure to lung diseases, to any other occu-  
47 pational disease, or to any condition likely to cause an  
48 occupational disease, and as to any special medical atten-  
49 tion that he may have previously received in connection  
50 with any such disease.

Sec. 3. *Disbursements for Medicine, Hospital Treat-  
2 ment, Artificial Limbs and Other Appliances; Contract  
3 by Employer with Hospital Prohibited.*—Except in case

4 of silicosis, the commissioner shall disburse and pay from  
5 the fund for such personal injuries to such employees as  
6 may be entitled thereto hereunder as follows:

7 (a) Such sums for medicine, medical, surgical, dental  
8 and hospital treatment, crutches, artificial limbs and such  
9 other and additional approved mechanical appliances and  
10 devices as may be reasonably required, but in no case to  
11 exceed the sum of sixteen hundred dollars: *Provided,*  
12 *however,* That in exceptional cases where the treatment  
13 required, in the opinion of competent medical authority,  
14 is such as to necessitate an expenditure in excess of such  
15 amount, the commissioner may, with the approval of the  
16 employer, pay out of any available funds, such additional  
17 sum as may be necessary, not to exceed an additional sum  
18 of eight hundred dollars, but such additional sum shall  
19 not be charged to the account of the employer.

20 (b) Payment for such medicine, medical, surgical,  
21 dental and hospital treatment, crutches, artificial limbs  
22 and such other and additional approved mechanical ap-  
23 pliances and devices authorized under subdivision (a)  
24 hereof may be made to the injured employee, or to the  
25 person or persons who have furnished such service, or  
26 who have advanced payment for same, as the commis-  
27 sioner may deem proper, but no such payments or dis-  
28 bursements shall be made or awarded by him unless duly  
29 verified statements on forms prescribed by the commis-  
30 sioner shall be filed with the commissioner within six  
31 months after the cessation of such treatment or the de-  
32 livery of such appliances.

33 (c) No employer shall enter into any contracts with  
34 any hospital, its physicians, officers, agents or employees,  
35 to render medical, dental or hospital service or to give  
36 medical or surgical attention therein to any employee  
37 for injury compensable within the purview of this act,  
38 and no employer shall permit or require any employee  
39 to contribute, directly or indirectly, to any fund for the  
40 payment of such medical, surgical, dental or hospital  
41 service within such hospital for such compensable injury.  
42 Any employer violating this section shall be liable in  
43 damages to his or its employees and shall not avail him-

44 self of any of the common law defenses mentioned in  
45 section eight, article two of this chapter, and any em-  
46 ployer or hospital or agent or employee thereof violating  
47 the provisions of this section shall be guilty of a misde-  
48 meanor and upon conviction thereof shall be sentenced  
49 to pay a fine not exceeding one thousand dollars or to  
50 undergo imprisonment not exceeding one year, or both.

Sec. 4. *Funeral Expenses.*—In case the personal injury  
2 causes death, and disability is continuous from the date  
3 of such injury to date of death, reasonable funeral ex-  
4 penses, not to exceed three hundred dollars, shall be paid  
5 from the fund, payment to be made to the persons who  
6 have furnished the service and supplies, or to the persons  
7 who have advanced payment for same, as the commis-  
8 sioner may deem proper, in addition to such award as may  
9 be made to the employee's dependents.

Sec. 6. *Classification of Disability Benefits.*—Where  
2 compensation is due an employee under the provisions  
3 of this chapter for a personal injury other than silicosis,  
4 such compensation shall be as provided in the following  
5 schedule:

6 (a) If the injury causes temporary total disability, the  
7 employee shall receive during the continuance thereof  
8 sixty-six and two-thirds per cent of his average weekly  
9 earnings, not to exceed a maximum of twenty-five dollars  
10 a week nor to be less than a minimum of fifteen dollars  
11 a week.

12 (b) Subdivision (a) shall be limited as follows: Ag-  
13 gregate award for a single injury causing temporary  
14 disability shall be for a period not exceeding one hundred  
15 and fifty-six weeks.

16 (c) If the injury causes permanent disability, the per-  
17 centage of disability to total disability shall be determined  
18 and the award computed and allowed as follows:

19 For permanent disability of from one per cent to eighty-  
20 five per cent, sixty-six and two-thirds per cent of the  
21 average weekly earnings for a period to be computed on  
22 the basis of four weeks' compensation for each per cent  
23 of disability determined.

24 For a disability from eighty-five to one hundred per  
25 cent, sixty-six and two-thirds per cent of the average  
26 weekly earnings during the remainder of life.

27 (d) If the injury results in the total loss by  
28 severance of any of the members named in this  
29 subdivision, the percentage of disability shall be de-  
30 termined in accordance with the following table,  
31 and award made as provided in subdivision (c) of this  
32 section:

33 The loss of a great toe shall be considered a ten per  
34 cent disability.

35 The loss of a great toe (one phalanx) shall be con-  
36 sidered a five per cent disability.

37 The loss of other toes shall be considered a four per  
38 cent disability.

39 The loss of other toes (one phalanx) shall be consid-  
40 ered a two per cent disability.

41 The loss of all toes shall be considered a twenty-five  
42 per cent disability.

43 The loss of fore part of foot shall be considered a thirty  
44 per cent disability.

45 The loss of foot shall be considered a thirty-five per  
46 cent disability.

47 The loss of leg shall be considered a forty-five per cent  
48 disability.

49 The loss of thigh shall be considered a fifty per cent  
50 disability.

51 The loss of thigh at hip joint shall be considered a sixty  
52 per cent disability.

53 The loss of little or fourth finger (one phalanx) shall  
54 be considered a three per cent disability.

55 The loss of little or fourth finger shall be considered  
56 a five per cent disability.

57 The loss of ring or third finger (one phalanx) shall be  
58 considered a three per cent disability.

59 The loss of ring or third finger shall be considered a  
60 five per cent disability.

61 The loss of middle or second finger (one phalanx)  
62 shall be considered a three per cent disability.



63 The loss of middle or second finger shall be considered  
64 a seven per cent disability.

65 The loss of index or first finger (one phalanx) shall  
66 be considered a six per cent disability.

67 The loss of index or first finger shall be considered a  
68 ten per cent disability.

69 The loss of thumb (one phalanx) shall be considered  
70 a twelve per cent disability.

71 The loss of thumb shall be considered a twenty per  
72 cent disability.

73 The loss of thumb and index finger shall be considered  
74 a thirty-two per cent disability.

75 The loss of index and middle finger shall be considered  
76 a twenty per cent disability.

77 The loss of middle and ring finger shall be considered  
78 a fifteen per cent disability.

79 The loss of ring and little finger shall be considered a  
80 ten per cent disability.

81 The loss of thumb, index and middle finger shall be  
82 considered a forty per cent disability.

83 The loss of index, middle and ring finger shall be con-  
84 sidered a thirty per cent disability.

85 The loss of middle, ring and little finger shall be con-  
86 sidered a twenty per cent disability.

87 The loss of four fingers shall be considered a thirty-  
88 two per cent disability.

89 The loss of hand shall be considered a fifty per cent  
90 disability.

91 The loss of forearm shall be considered a fifty-five per  
92 cent disability.

93 The loss of arm shall be considered a sixty per cent  
94 disability.

95 The total and irrevocable loss of the sight of one eye  
96 shall be considered a thirty-three per cent disability,  
97 and the injured employee shall be entitled to compen-  
98 sation for a period of one hundred and thirty-two weeks.

99 For the partial loss of vision in one, or both eyes, the  
100 percentage of disability shall be determined by the com-  
101 missioner, using as a basis the total loss of one eye.

102 (e) Should a claimant to whom has been made a per-

103 manent partial award of from one per cent to eighty-  
104 five per cent, both inclusive, die from sickness or non-  
105 compensable injury, the unpaid balance of such award  
106 shall be paid to claimant's dependents as defined in this  
107 chapter, if any; such payment to be in the same install-  
108 ments that would have been paid to claimant if living:  
109 *Provided, however,* That no payment shall be made to  
110 any widow of such claimant after her remarriage, and that  
111 this liability shall not accrue to the estate of such claim-  
112 ant and shall not be subject to any debts of, or charges  
113 against, such estate.

114 (f) The award for permanent disabilities intermediate  
115 to those fixed by the foregoing schedule and permanent  
116 disability of from one per cent to eighty-five per cent  
117 shall be in the same proportion and shall be computed  
118 and allowed by the commissioner.

119 (g) The percentage of all permanent disabilities other  
120 than those enumerated in subdivisions (c), (d), (e),  
121 and (f) of this section shall be determined by the com-  
122 missioner, and award made in accordance with the pro-  
123 visions of subdivision (c).

124 (h) Compensation payable under any subdivision of  
125 this section shall be limited as follows: Not to exceed  
126 a maximum of twenty-five dollars a week, nor to be less  
127 than a minimum of twelve dollars a week.

128 (i) Where an injury results in temporary total disa-  
129 bility for which compensation is awarded under sub-  
130 division (a) of this section and such injury is later de-  
131 termined permanent partial disability under subdivision  
132 (c), the amount of compensation so paid shall be con-  
133 sidered as payment of the compensation payable for such  
134 injury in accordance with the schedule in subdivision  
135 (c). Compensation, either total temporary or permanent  
136 partial, under this section shall be payable only to the  
137 injured employee and the right thereto shall not vest  
138 in his or her estate, except that any unpaid compensa-  
139 tion which would have been paid or payable to the em-  
140 ployee upto the time of his death, if he had lived, shall  
141 be paid to the dependents of such injured employee if  
142 there be such dependents at the time of death.

143 (j) The following permanent disabilities shall be con-  
144 clusively presumed to be total in character:

145 Loss of both eyes or the sight thereof.

146 Loss of both hands or the use thereof.

147 Loss of both feet or the use thereof.

148 Loss of one hand and one foot or the use thereof.

149 In all other cases permanent disability shall be de-  
150 termined by the commissioner in accordance with the  
151 facts in the case, and award made in accordance with  
152 the provisions of subdivision (c).

Sec. 6-a. *Stages of Silicosis; Benefits and Mode of*  
2 *Payment to Employees and Dependents.*—An employee  
3 shall, for the purpose hereof, be deemed to have silicosis:  
4 (1) In the first stage when it is found by the commis-  
5 sioner that the earliest detectable specific signs of sili-  
6 cosis are present, whether or not capacity for work is  
7 or has been impaired by such silicosis; (2) In the second  
8 stage when it is found by the commissioner that definite  
9 and specific physical signs of silicosis are present, and  
10 that capacity for work is or has been impaired by that  
11 disease; (3) In the third stage when it is found by the  
12 commissioner that the employee has silicosis resulting  
13 in total permanent disability, whether or not accom-  
14 panied by tuberculosis of the lungs.

15 Where compensation for silicosis is due an employee  
16 under the provisions hereof, such compensation shall  
17 be as provided in the following schedule: (a) If the em-  
18 ployee is suffering from silicosis in the first stage, the em-  
19 ployee shall receive one thousand dollars as compensation  
20 in full for silicosis that he has sustained as a result of and  
21 in the course of his employment, to be payable as a lump  
22 sum or in periodic installments in the discretion of the  
23 commissioner, which shall be a final payment and op-  
24 erate as a full release by the employee for compensation  
25 and for any claim against the employer that the employee  
26 may thereafter have for silicosis, and irrespective of  
27 whether the employee thereafter continues in the same  
28 employment, he shall not have the right to receive any  
29 or further compensation or make any claim because of  
30 silicosis, either to the compensation commissioner or

31 against his employer, anything to the contrary in this  
32 chapter notwithstanding. (b) If the employee is suffer-  
33 ing from silicosis in the second stage, the employee shall  
34 receive two thousand dollars as compensation in full for  
35 silicosis that he has sustained as a result of and in the  
36 course of his employment, to be payable as a lump sum  
37 or in periodic installments in the discretion of the com-  
38 missioner, which shall be a final payment and operate  
39 as a full release by the employee for compensation and  
40 for any claim against the employer that the employee  
41 may thereafter have for silicosis and irrespective of  
42 whether the employee thereafter continues in the same  
43 employment, he shall not have the right to receive any  
44 or further compensation or make any claim because of  
45 silicosis either to the commissioner or against his em-  
46 ployer, anything to the contrary in this chapter notwith-  
47 standing. (c) If the employee is suffering from silicosis  
48 in the third stage, the compensation shall be paid therefor  
49 in the same manner and at the same rate as is provided  
50 for permanent disability under the provisions of sub-  
51 divisions (c), (f) and (h) of the preceding section. (d)  
52 If the employee dies from silicosis within six years from  
53 the date of his last injurious exposure to silicon dioxide  
54 dust in harmful quantities and the commissioner has de-  
55 termined at the time of the original award that he was  
56 suffering from silicosis in the third stage, the benefits shall  
57 be in the amounts and to the persons provided for in sec-  
58 tion ten of this article; as to such benefits sections eleven  
59 to fourteen inclusive, of this article shall apply.

Sec. 8. *Physical Examination of Claimant; Expenses.*—

2 The commissioner shall have authority, after due notice  
3 to the employer and claimant, whenever in his opinion  
4 it shall be necessary, to order a claimant of compensation  
5 for a personal injury other than silicosis or other occupa-  
6 tional disease to appear for examination before a medical  
7 examiner or examiners selected by the commissioner; and  
8 the claimant and employer, respectively, shall each have  
9 the right to select a physician of his or its own choosing  
10 and at his or its own expense to participate in such exami-  
11 nation. The claimant and employer shall, respectively be

12 furnished with a copy of the report of examination made  
13 by the medical examiner or examiners selected by the  
14 commissioner. The respective physicians selected by the  
15 claimant and employer shall have the right to concur in  
16 any report made by the medical examiner or examiners  
17 selected by the commissioner, or each may file with the  
18 commissioner a separate report, which separate report  
19 shall be considered by the commissioner in passing upon  
20 the claim. If the compensation claimed is for silicosis, the  
21 commissioner shall have the power, after due notice to the  
22 employer, and whenever in his opinion it shall be neces-  
23 sary, to order a claimant to appear for examination before  
24 the silicosis medical board hereinafter provided. If the  
25 compensation claimed is for an occupational disease other  
26 than silicosis, the commissioner shall have the power, after  
27 due notice to the employer, and whenever in his opinion it  
28 shall be necessary, to order a claimant to appear for exami-  
29 nation before the occupational diseases medical board  
30 hereinafter provided. In any case the claimant shall be  
31 entitled to reasonable traveling and other expenses neces-  
32 sarily incurred by him in obeying such order, which shall  
33 be paid out of the amount allowed under this chapter for  
34 medical, surgical, dental and hospital treatment.

*Sec. 8-d. Occupational Diseases Medical Board Created;*

2 *Qualifications; Term of Office; Duties; Remuneration.—*  
3 There shall be a medical board, known as the "occupa-  
4 tional diseases medical board", which shall consist of three  
5 licensed physicians to be appointed by the commissioner.  
6 No person shall be appointed as a member of such board,  
7 or as a consultant thereto, who has not by special study  
8 or experience, or both, acquired special knowledge of  
9 occupational diseases. All members of the board shall  
10 be physicians of good professional standing, admitted to  
11 practice medicine and surgery in this state. One of the  
12 board shall be designated annually as chairman by the  
13 commissioner. The term of office of each member of such  
14 board shall be six years. The function of the board shall  
15 be to determine all medical questions relating to cases of  
16 compensation for occupational diseases other than sili-  
17 cosis, under the direction and supervision of the commis-

18 sioner. The commissioner from time to time, shall fix  
19 the per diem salary, computed on the basis of actual time  
20 devoted to the discharge of their duties, to be paid the  
21 members of such board, and they shall also be entitled  
22 to reasonable and necessary traveling and other expenses  
23 incurred while actually engaged in the performance of  
24 their duties.

25 In the event the board shall deem it desirable, it may  
26 appoint a physician or physicians of good professional  
27 standing, admitted to practice medicine and surgery in  
28 this state, to conduct such clinical, physical and X-ray  
29 examinations of claimants as may in the opinion of the  
30 board be necessary. Such examiner or examiners shall  
31 prepare a written report setting forth their findings with  
32 respect to all medical questions involved in the claim;  
33 copies of such report shall be furnished the employee and  
34 employer and filed with the board, together with a copy  
35 of all hospital records, laboratory findings, X-rays or other  
36 evidence considered by such examiner or examiners; such  
37 records and reports shall then be considered by the board  
38 in passing upon the medical issues involved in the claim.  
39 Any such examiners shall be paid such fees and expenses  
40 as may be prescribed by the commissioner.

Sec. 8-e. *Occupational Diseases Medical Board; Procedure; Autopsy.*—The occupational diseases medical  
2 board, upon reference to it by the commissioner of a case  
3 involving an occupational disease other than silicosis,  
4 shall notify the employee, or in case he is dead, the claim-  
5 ant, and the employer, to appear before such board, or  
6 before an examiner or examiners appointed by it, at the  
7 time and place stated in the notice. If the employee be  
8 living, he shall appear at the time and place specified and  
9 submit to such examination, including clinical and X-ray  
10 examinations, as the board may require. If a physican  
11 licensed to practice medicine in the state shall make affi-  
12 davit that the employee is physically unable to appear  
13 at the time and place designated by the board, such board  
14 shall, on notice to the proper parties, change the place  
15 and time as may reasonably facilitate the hearing or ex-  
16 amination of the employee. The employee, or in case he  
17

18 is dead, the claimant, and the employer shall also produce  
19 as evidence for the board, or for any examiner appointed  
20 by it, all reports of medical and X-ray examinations which  
21 may be in their respective possession or control, showing  
22 the past or present condition of the employee. If the em-  
23 ployee be dead, the notice of the board shall further re-  
24 quire that the claimant produce necessary consents and  
25 permits so that an autopsy may be performed, if the board  
26 shall so direct. When in the opinion of the board an au-  
27 topsy is deemed necessary accurately and scientifically  
28 to ascertain and determine the cause of death, such au-  
29 topsy examination shall be ordered by the board, which  
30 shall designate a duly licensed physician, a pathologist,  
31 or such other specialists as may be deemed necessary by  
32 the board, to make such examination and tests to deter-  
33 mine the cause of death and certify his or their written  
34 findings, in triplicate, to the board, which findings shall  
35 be public records. In the event that a claimant for com-  
36 pensation for such death refuses to consent and permit  
37 such autopsy to be made, all rights for compensation shall  
38 thereupon be forfeited.

39 The employee, or if he be dead, the claimant, and the  
40 employer, shall be entitled to be present at all examina-  
41 tions conducted by the board, or by any examiner ap-  
42 pointed by it, and to be represented by attorneys and  
43 physicians.

Sec. 8-f. *Occupational Diseases Medical Board; Reports  
2 and Distribution Thereof, Findings Required of Board;  
3 Objection to Findings; Procedure Thereon.*—The occupa-  
4 tional diseases medical board, as soon as practicable, after  
5 it has completed its investigation, shall make its written  
6 report, to the commissioner, of its findings and conclu-  
7 sions on every medical question in controversy, and the  
8 commissioner shall send one copy thereof to the employee  
9 or claimant and one copy to the employer, and the board  
10 shall also return to and file with the commissioner all  
11 the evidence, as well as all statements under oath, if any,  
12 of the persons who appeared before it or before any ex-  
13 aminer appointed by it on behalf of the employee or claim-  
14 ant, or employer, and also all medical reports and X-ray

15 examinations produced by or on behalf of the employee  
16 or claimant, or the employer.

17 The findings and conclusions of the board shall set forth,  
18 among other things, the following:

19 (a) Does the claimant suffer from a disease or infec-  
20 tion? If so, what?

21 (b) When was such disease or infection, if any, con-  
22 tracted and approximately how long has claimant suffered  
23 therefrom?

24 (c) Is such disease or infection, if any, peculiar to the  
25 industrial process, trade or occupation in which claimant  
26 has been last employed?

27 (d) Was such disease or infection, if any, incurred in  
28 the course of and did it result from the claimant's regular  
29 employment in such industrial process, trade or occupa-  
30 tion?

31 (e) Is such disease, if any, disabling to the claimant?

32 (f) If so, to what degree is claimant disabled by such  
33 occupational disease?

34 (g) Any other matter deemed pertinent by the board.

35 If the claim be for death benefits under the provisions  
36 of this chapter, the medical board shall find on each of the  
37 above questions as of a date immediately preceding the  
38 employee's death, and in addition shall find the cause of  
39 death.

40 If either party objects to the whole or any part of such  
41 findings and conclusions of the board, he shall file with  
42 the commissioner, within fifteen days of the mailing of  
43 such copy to him unless for good cause shown the com-  
44 missioner extends such time, his objections thereto in  
45 writing, specifying the particular statements of the board's  
46 findings and conclusions to which he objects. After the  
47 time has expired for the filing of objections to the findings  
48 and conclusions of the board, the commissioner shall pro-  
49 ceed to act as provided in this chapter. If after the time  
50 has expired for the filing of objections to the findings and  
51 conclusions of the board no objections have been filed,  
52 the report of a majority of the board of its findings and  
53 conclusions on any medical question shall be taken to be  
54 plenary and conclusive evidence of the findings and con-



55 clusions therein stated. If objection has been filed to the  
56 findings and conclusions of the board, notice thereof shall  
57 be given to the board, and the members thereof who  
58 joined in such findings and conclusions, and any exam-  
59 iner who filed a report in the case, shall appear at the  
60 time fixed by the commissioner for the hearing to submit  
61 to examination and cross-examination in respect to such  
62 findings and conclusions. At such hearing evidence to  
63 support or controvert the findings and conclusions of the  
64 board shall be heard.

Sec. 9. *Physical and Vocational Rehabilitation.*—In  
2 cases where an employee has sustained a permanent dis-  
3 ability, or has sustained injuries likely to result in per-  
4 manent disability, and such fact has been determined by  
5 the commissioner, and the employee can be physically  
6 and vocationally rehabilitated and returned to remunera-  
7 tive employment by vocational training, by the use of  
8 crutches, artificial limbs, or other approved mechanic  
9 appliances, or by medicines, medical, surgical, dental or  
10 hospital treatment, the commissioner shall forthwith, after  
11 due notice to the employer, expend such an amount as  
12 may be necessary for the aforesaid purposes, not, how-  
13 ever, in any case, to exceed the sum of eight hundred dol-  
14 lars. No payment, however, shall be made for such pur-  
15 poses as provided by this section unless authorized by the  
16 commissioner prior to the rendering of such treatment.

17 In every case in which the commissioner shall order  
18 physical or vocational rehabilitation of a claimant as pro-  
19 vided herein, the claimant shall, during the time he is  
20 receiving any vocational rehabilitation or rehabilitative  
21 treatment that renders him totally disabled during the  
22 period thereof, be compensated on a temporary total dis-  
23 ability basis for such period, unless he is being paid com-  
24 pensation under an award granted prior to the time such  
25 rehabilitation is authorized by the commissioner.

Sec. 10. *Classification of Death Benefits; "Dependent"*  
2 *Defined.*—In case a personal injury other than silicosis or  
3 other occupational disease, suffered by an employee in the  
4 course of and resulting from his employment, causes death

5 within the period of six years and disability is contin-  
6 uous from date of such injury until date of death, or if  
7 death results from determined third degree silicosis or  
8 from any other occupational disease within six years from  
9 the date of the last exposure to the hazard of silicon di-  
10 oxide dust or to the other particular occupational hazard  
11 involved, as the case may be, the benefits shall be in the  
12 amounts and to the persons as follows:

13 (a) If there be no dependents, the disbursements shall  
14 be limited to the expense provided for in sections three  
15 and four of this article.

16 (b) If the deceased employee leaves a dependent wid-  
17 ow or invalid widower, the payment shall be fifty dollars  
18 a month until death or remarriage of such widow or wid-  
19 ower, and in addition fifteen dollars a month for each  
20 child under eighteen years of age, to be paid until such  
21 child reaches such age, or, if an invalid child, twenty dol-  
22 lars a month, to continue as long as such child remains an  
23 invalid: *Provided, however,* That if such widow or invalid  
24 widower shall remarry within ten years from the date of  
25 the death of such employee, such widow or widower shall  
26 be paid at the time of remarriage twenty per cent of the  
27 amount that would be due for the period remaining be-  
28 tween the date of such remarriage and the end of ten  
29 years from the date of death of such employee, and such  
30 widow or widower shall be advised in writing by the com-  
31 missioner of his or her rights under this proviso at the time  
32 of making the original award: *Provided further,* That if  
33 upon investigation and hearing, as provided in article five  
34 of this chapter, it shall be ascertained that such widow  
35 or widower is living with a man or woman, as the case  
36 may be, as man and wife and not married, or that the  
37 widow is living a life of prostitution, the commissioner  
38 shall stop the payments of the benefits herein provided to  
39 such widow or widower.

40 If the deceased employee be a widow or widower and  
41 leaves a child or children under the age of eighteen years,  
42 the payment shall be twenty dollars a month to each child  
43 until he or she reaches the age of eighteen years.

44 In all awards of compensation to children, unless other-

45 wise provided herein, the award shall be until they reach  
46 the age of eighteen years or until their death prior thereto.

47 (c) If the deceased employee leaves no dependent wid-  
48 ow or widower and leaves a wholly dependent father or  
49 mother, he or she shall be paid the sum of thirty dollars  
50 a month, payments to continue until death, and if there  
51 be no widow or widower and both the father and mother  
52 are wholly dependent, then a joint award shall be made  
53 to the father and mother in the sum of thirty dollars a  
54 month until death. Upon the death of either the father or  
55 mother in any case in which a joint award has been made  
56 to them, the full award of thirty dollars a month shall be  
57 paid to the survivor until his or her death.

58 (d) If the deceased employee leaves no dependent wid-  
59 ow or widower or wholly dependent father or mother but  
60 there are other wholly dependent persons, as defined in  
61 paragraph (f) of this section, the payment shall be twenty  
62 dollars a month, to continue for six years after the death  
63 of the deceased, except as otherwise provided herein.

64 (e) If the deceased employee leaves no dependent wid-  
65 ow or widower, child under eighteen years of age, or whol-  
66 ly dependent person, but there are partially dependent  
67 persons at the time of death, the payment shall be twenty  
68 dollars a month, to continue for such portion of the period  
69 of six years after the death, as the commissioner may de-  
70 termine, but no such partially dependent person shall  
71 receive compensation payments as a result of the death of  
72 more than one employee.

73 Compensation under subdivisions (b), (c), (d), and (e)  
74 hereof shall, except as may be specifically provided to the  
75 contrary therein, cease upon the death of the dependent,  
76 and the right thereto shall not vest in his or her estate.

77 (f) Dependent, as used in this chapter, shall mean a  
78 widow, invalid widower, child under eighteen years of  
79 age, invalid child or a posthumous child, who, at the time  
80 of the injury causing death, is dependent in whole or in  
81 part for his or her support upon the earnings of the em-  
82 ployee; also the following persons who are and continue  
83 to be residents of the United States or its territorial pos-  
84 sessions: Stepchild under eighteen years of age, child

85 under eighteen years of age legally adopted prior to the  
86 injury causing death, father, mother, grandfather or  
87 grandmother, who, at the time of the injury causing death,  
88 is dependent in whole or in part for his or her support  
89 upon the earnings of the employee; an invalid brother or  
90 sister wholly dependent for his or her support upon the  
91 earnings of the employee at the time of the injury causing  
92 death.

Sec. 14. *Computation of Benefits.*—The average weekly  
2 wage earnings, wherever earned, of the injured person  
3 at the time of the injury, shall be taken as the basis upon  
4 which to compute the benefits. The time of injury within  
5 the meaning of this section shall be two months, six or  
6 twelve months immediately preceding the date of the in-  
7 jury, whichever is most favorable to the injured em-  
8 ployee. In cases involving silicosis or other occupational  
9 diseases, the "date of injury" shall be the date of the last  
10 exposure to the hazard of silicon dioxide dust or to the  
11 other particular occupational hazard involved, as the case  
12 may be.

Sec. 15. *Application for Benefits.*—To entitle any em-  
2 ployee or dependent of a deceased employee to compensa-  
3 tion under this chapter, other than for silicosis, the appli-  
4 cation therefor must be made on the form or forms pre-  
5 scribed by the commissioner and filed in the office of the  
6 commissioner within one year from and after the injury  
7 or death, as the case may be, and all proofs of dependency  
8 in fatal cases must like wise be filed with the commis-  
9 sioner within one year from and after the death. In case  
10 the employee is mentally or physically incapable of filing  
11 such application, it may be filed by his attorney or by a  
12 member of his family.

13 To entitle any employee to compensation for silicosis  
14 under the provisions hereof, the application therefor must  
15 be made on the form or forms prescribed by the commis-  
16 sioner and filed in the office of the commissioner within  
17 two years from and after the last day of the last continuous  
18 period of sixty days or more during which the employee  
19 was exposed to the hazard of silicon dioxide dust or to

20 the other particular occupational hazard involved, as the  
21 case may be, or, in the case of death, the application shall  
22 be filed as aforesaid by the dependent of such employee  
23 within one year from and after such employee's death.

Sec. 15-b. *Nonmedical Questions Determined by the  
2 Commissioner in Silicosis Cases; Hearing.*—If a claim for  
3 silicosis benefits be filed by an employee, the commissioner  
4 shall determine whether the claimant was exposed to the  
5 hazard of silicon dioxide dust for a continuous period of  
6 not less than sixty days while in the employ of the em-  
7 ployer within two years prior to the filing of his claim,  
8 and whether in the state of West Virginia the claimant  
9 was exposed to such hazard over a continuous period of  
10 not less than two years during the ten years immediately  
11 preceding the date of his last exposure thereto. If a claim  
12 for silicosis benefits be filed by a dependent of a deceased  
13 employee, the commissioner shall determine whether the  
14 deceased employee was exposed to the hazard of silicon  
15 dioxide dust for a continuous period of not less than sixty  
16 days while in the employ of the employer within six  
17 years prior to the filing of the claim, and whether in  
18 the state of West Virginia the deceased employee was  
19 exposed to such hazard over a continuous period of not  
20 less than two years during the ten years immediately pre-  
21 ceding the date of his last exposure thereto. The com-  
22 missioner shall also determine such other nonmedical facts  
23 as may in his opinion be pertinent to a decision on the  
24 validity of the claim.

25 The commissioner shall give each interested party  
26 notice in writing of his findings with respect to all such  
27 nonmedical facts and such findings shall be subject to  
28 objection and hearing as provided in section one, article  
29 five of this chapter.

Sec. 15-c. *Nonmedical Questions Determined by Com-  
2 missioner on Hearing of Claim for Occupational Diseases  
3 other than Silicosis.*—On the hearing of a claim for com-  
4 pensation for an occupational disease other than silicosis,  
5 the commissioner shall hear, determine and file findings  
6 covering, but not limited to, the following nonmedical  
7 questions:

8 (a) Whether the employee was in fact, within two  
9 years prior to the filing of his claim, in the employ of the  
10 employer, and, if so, the duration of such employment  
11 and whether or not such employment was subject to the  
12 provisions hereof.

13 (b) The occupation or occupations, process or pro-  
14 cesses, in which the employee was engaged during such  
15 employment and the approximate periods of work in each  
16 such occupation or process.

17 (c) The employments, previous and subsequent to the  
18 employment out of which the claim arose, the duration  
19 thereof and the exposure therein to the hazard causing  
20 the occupational disease.

21 (d) Whether the last injurious exposure to the hazard  
22 causing occupational disease in the employment with the  
23 employer lasted for a continuous period of not less than  
24 sixty days and occurred within two years prior to the filing  
25 of the claim, and if the employee is no longer in the service  
26 of the employer, the date upon which such employee ceased  
27 so to work; and, if the employee has died, the date and  
28 place of such death, and the place of interment of the body.

29 The parties may in writing waive the hearing required  
30 by this section, in which case the commissioner shall de-  
31 termine the nonmedical facts listed above, and such other  
32 nonmedical facts as may in his opinion be pertinent to a  
33 decision on the validity of the claim.

34 The commissioner shall give each interested party notice  
35 in writing of his findings with respect to all such non-  
36 medical facts, and such findings shall be subject to objec-  
37 tion and hearing as provided in section one, article five of  
38 this chapter.

2 Sec. 16. *Commissioner's Jurisdiction over Case Con-*  
3 *tinuous; Modification of Finding or Order; Time Limi-*  
4 *tation on Awards.*—The power and jurisdiction of the  
5 commissioner over each case shall be continuing and he  
6 may from time to time, after due notice to the employer,  
7 make such modifications or changes with respect to for-  
8 mer findings or orders as may be justified: *Provided,*  
9 *however, That no further award may be made in fatal*  
cases arising after March seventh, one thousand nine

10 hundred twenty-nine, except within two years after the  
11 death of the employee, or, in case of non-fatal injuries,  
12 on and after March seventh, one thousand nine hundred  
13 twenty-nine, except within three years after payments  
14 for temporary disability shall have ceased or within one  
15 year after the commissioner shall have made the last  
16 payment in any permanent disability case: *And provided*  
17 *further*, That no such modification or change may be  
18 made in any case in which no award has been made,  
19 except within three years after the date of injury. In  
20 any case in which an injured employee shall make ap-  
21 plication for a further adjustment of his claim, if such  
22 application be in writing and filed within the applicable  
23 time limit as prescribed herein, the commissioner shall  
24 pass upon and determine the merits of such application  
25 within thirty days after the filing thereof.

26 If such application is based on a report of any medical  
27 examination made of the claimant and submitted by the  
28 claimant to the commissioner in support of his applica-  
29 tion, and the claim is opened for further consideration and  
30 additional award is later made, the claim shall be reim-  
31 bursed for the expenses of such examination. Such reim-  
32 bursement shall be made by the commissioner to the  
33 claimant, in addition to all other benefits awarded, upon  
34 due proof of the amount thereof being furnished the com-  
35 missioner by the claimant, but shall in no case exceed the  
36 sum of fifty dollars.

## Article 5. Review.

### Section

#### 5. Fees of attorney for claimant.

Section 5. *Fees of Attorney for Claimant.*—If any  
2 claimant shall employ an attorney to represent him in  
3 connection with any claim arising under this chapter and  
4 such attorney shall file with the commissioner an exe-  
5 cuted copy of his contract of employment with such  
6 claimant, it shall be the duty of the commissioner to  
7 protect such attorney in the collection of his fee to the  
8 extent hereinafter provided, and if such contract does  
9 not violate the schedule of fees specified herein, the com-

10 missioner shall pay the fee directly to the attorney from  
11 any award made in favor of the claimant.

12 In the case of an uncontested claim in respect to which  
13 the commissioner has not denied an award or has not  
14 refused to make an award in the amount requested by the  
15 claimant, the commissioner shall not assist the attorney  
16 in the collection of any fee. If, however, in the case of an  
17 uncontested claim the commissioner shall, prior to the  
18 filing of a formal protest, make an award previously de-  
19 nied or shall increase the amount of a claim previously  
20 awarded, the attorney fee shall not exceed seventy-five  
21 dollars. If a contested claim is finally determined while  
22 pending before the commissioner and no appeal is filed  
23 therein with the appeal board, the attorney fee shall not  
24 exceed one hundred fifty dollars; if the claim is finally  
25 determined while pending before the appeal board, the  
26 attorney fee shall not exceed three hundred dollars; and  
27 if the claim is finally determined by the supreme court of  
28 appeals, or if an appeal is allowed by such court, the at-  
29 torney fee shall not exceed five hundred dollars. In no  
30 event, however, shall the commissioner pay an aggregate  
31 attorney fee of more than five hundred dollars in respect  
32 to any one claim, nor shall he pay an aggregate attorney  
33 fee of more than twenty-five per cent of the total award  
34 therein, nor shall he pay an aggregate attorney fee of  
35 more than twenty-five per cent of any increase in an  
36 award that may be made in any case in which a previous  
37 award had been made prior to the employment of the  
38 attorney, or in which a previous award had been made by  
39 the commissioner upon the original application without  
40 having been first denied.

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## CHAPTER 137

(House Bill No. 174—By Mr. Wright)

AN ACT to authorize the county court of Berkeley county to enter into a contract with the city of Martinsburg, providing for fire protection in said county by said city and



authorizing said court to pay to the city of Martinsburg, such sum or sums as may be agreed upon in contract to the city of Martinsburg for fire protection furnished by said city to all points within Berkeley county.

[Passed March 12, 1949; in effect from passage. Approved by the Governor.]

Section

1. Fire protection in Berkeley county; contract between county court and city of Martinsburg.

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

Section 1. *Fire Protection in Berkeley County; Contract Between County Court and City of Martinsburg.*—The county court of Berkeley county, be and it hereby is authorized, directed and empowered to enter into a contract with the city of Martinsburg, whereby the said city of Martinsburg agrees to furnish fire protection to all points within Berkeley county.

The county court of Berkeley county is further authorized and empowered to agree in said contract to pay the said city of Martinsburg such sum as it, the said county court, deems proper for the furnishing of said fire protection within Berkeley county.

The county court of Berkeley county is further authorized and empowered to transfer and pay over to the city of Martinsburg, from the general county fund, such sum as it may agree to pay in said contract, to be used and expended by the said city of Martinsburg, in furnishing fire protection to all points within said county.

An emergency existing this act shall be in force from passage.

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## CHAPTER 138

(House Bill No. 329—By Mr. McLaughlin, of Braxton)

AN ACT to compensate Amos Green for personal injuries and to reimburse him for medical and hospital expenses and

other costs incurred as a result of the breaking of a bridge cable.

[Passed March 12, 1949; in effect July 1, 1949. Approved by the Governor.]

**Section**

1. Compensation and reimbursement for Amos Green for personal injuries, etc., sustained by falling off a bridge.
2. Finding of moral obligation.

WHEREAS, On the fourth day of March, one thousand nine hundred forty-eight, Amos Green, of Sutton, Braxton county, West Virginia, was working as a carpenter for the county board of education of Braxton county, West Virginia, on a bridge located at Falls Mill, Braxton county, West Virginia; and

WHEREAS, While actually engaged in such employment as a carpenter for the said county of Braxton on the aforesaid bridge, the cable of the bridge broke by reason of the negligence of said county board of education, and the said Amos Green was hurled violently into the Little Kanawha River; and

WHEREAS, As a result of so being hurled violently into the Little Kanawha river, the said Amos Green suffered a broken leg, in addition to cuts, contusions, abrasions and disabilities, and was hospitalized and necessarily incurred certain medical, hospital and other expenses; and

WHEREAS, Amos Green was in no sense at fault in the premises; therefore,

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

Section 1. *Compensation and Reimbursement for Amos Green for Personal Injuries, etc., Sustained by Falling off a Bridge.*—The county board of education of Braxton county, West Virginia, is hereby authorized and directed to pay Amos Green two thousand twenty-nine dollars for personal injuries, medical, hospital, loss of employment, and other costs, sustained by him by falling from a bridge at Falls Mill, which was occasioned by the breaking of a bridge cable.

Sec. 2. *Finding of Moral Obligation.*—It is hereby de-

- 2 clared to be the finding of the Legislature that this reim-  
3 bursement is necessary to discharge a moral obligation of  
4 the county board of education of Braxton county.
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## CHAPTER 139

(House Bill No. 201—By Mr. Campbell, of Cabell, and Mr. Leap)

AN ACT to amend and reenact sections one and two chapter twenty-eight, acts of the Legislature, regular session, one thousand eight hundred ninety-three, as amended by section one, chapter ninety, acts of the Legislature, regular session, one thousand nine hundred seventeen; and to amend and reenact section twenty-four, chapter ninety, acts of the Legislature, regular session, one thousand nine hundred seventeen, as amended by section twenty-four, chapter one hundred sixty-seven, acts of the Legislature, regular session, one thousand nine hundred twenty-one, and as amended by section twenty-four, chapter one hundred one, acts of the Legislature, regular session, one thousand nine hundred thirty-one, as amended by section twenty-four, chapter one hundred forty-two, acts of the Legislature, regular session, one thousand nine hundred thirty-five, creating and defining the purposes and jurisdiction of the common pleas court of Cabell county and fixing the salary of the judge thereof.

[Passed February 22, 1949; in effect ninety days from passage. Approved by the Governor.]

### Section

1. Common pleas court of Cabell county established.
2. Jurisdiction; supervision, etc., of criminal and civil cases before justices, etc.
24. Salary of judge.

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

That sections one and two, chapter twenty-eight, acts of the Legislature, regular session, one thousand eight hundred ninety-three, as amended by section one, chapter ninety, acts of the Legislature, regular session, one thousand nine hundred seven-

teen, and section twenty-four, chapter ninety, acts of the Legislature, regular session, one thousand nine hundred seventeen, as amended by section twenty-four, chapter one hundred sixty-seven, acts of the Legislature, regular session, one thousand nine hundred twenty-one, and as amended by section twenty-four, chapter one hundred one, acts of the Legislature, regular session, one thousand nine hundred thirty-one, and as amended by section twenty-four, chapter one hundred forty-two, acts of the Legislature, regular session, one thousand nine hundred thirty-five, be amended and reenacted to read as follows:

Section 1. *Common Pleas Court of Cabell County Established.*—The common pleas court of Cabell county, as created and established by chapter ninety, acts of the Legislature, regular session, one thousand nine hundred seventeen, by amending chapter twenty-eight, acts of the Legislature, regular session, one thousand eight hundred ninety-three, is hereby established and created for the intent and purpose of being a court of limited jurisdiction with common and concurrent jurisdiction with the circuit court of Cabell county, within said county, in criminal, civil and equitable actions and causes.

Sec. 2. *Jurisdiction; Supervision, Etc., of Criminal and Civil Cases Before Justices, Etc.*—That said court shall have jurisdiction within said county, common and concurrent with the circuit court, of all felonies and misdemeanors committed within said county, and shall have the supervision and control of criminal and civil proceedings before justices of said county, the police judge or mayor of any incorporated city, town or village therein, by appeal, mandamus, prohibition and certiorari; the said court shall have original jurisdiction within said county concurrent with the circuit court of Cabell county of all suits and proceedings in equity, except where it shall appear from the pleadings that the matter in controversy exceeds the value of five hundred thousand dollars and actions of ejectment, and of all other civil actions or proceedings at law, except where it shall appear from the pleadings that the matter in controversy exceeds the value of one thousand dollars; and also appellate jurisdiction in all cases,

19 civil and criminal, from judgments of justices of the peace  
20 in said county, police judge or mayor of any incorporated  
21 city, town or village, or of any inferior tribunal therein,  
22 wherein an appeal, writ of error, supersedeas or writ of  
23 certiorari may be allowed; subject to the right to proceed  
24 by appeal, writ of error, supersedeas or certiorari in all  
25 matters to the circuit court of Cabell county, as provided  
26 in section fifteen, chapter twenty-eight, acts of the Legis-  
27 lature, regular session, one thousand eight hundred nine-  
28 ty-three, and section twenty-six, chapter ninety, acts of  
29 the Legislature, regular session, one thousand nine hun-  
30 dred seventeen.

Sec. 24. *Salary of Judge.*—The judge of the common  
2 pleas court of Cabell county shall receive for his services  
3 seven thousand two hundred dollars annually, payable  
4 monthly in installments beginning on the first day of  
5 July, one thousand nine hundred forty-nine, which amount  
6 shall be provided for and paid by the county court, out  
7 of the treasury of said county, which provision as to salary  
8 shall not repeal the existing provision until the said first  
9 day of July, one thousand nine hundred forty-nine.

10 All acts or parts of acts inconsistent or in conflict with  
11 this act are hereby repealed.

## CHAPTER 140

(House Bill No. 200—By Mr. Campbell, of Cabell, and Mr. Leap)

AN ACT to amend and reenact sections one, two and four, chap-  
ter one hundred sixty-eight, acts of the Legislature, regular  
session, one thousand nine hundred twenty-one, as amend-  
ed, by chapter one hundred fifty-four, acts of the Legisla-  
ture, regular session, one thousand nine hundred thirty-  
nine, relating to the creation and establishment in the  
county of Cabell, of a court to be known as the "Domestic  
Relations Court," the jurisdiction of said court, and the  
salary of the judge thereof.

[Passed March 2, 1949; in effect ninety days from passage. Approved by the Governor.]

Section

1. Cabell county domestic relations court created.
2. Jurisdiction.
4. 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, regular session, one thousand nine hundred twenty-one, as amended by chapter one hundred fifty-four, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, be amended and reenacted to read as follows:

Section 1. *Cabell County Domestic Relations Court*

2 *Created.*—There is hereby created and established in and  
3 for the county of Cabell, with authority and jurisdiction  
4 co-extensive with the county, a court to be known as the  
5 "Domestic Relations Court" of Cabell county, for the trial  
6 of annulment of marriages, separate maintenance suits,  
7 divorces, alimony causes, the care and disposition of de-  
8 linquent, defective, neglected and dependent children,  
9 and desertion and non-support of wives and children,  
10 adoption, and for the enforcement of the general school  
11 laws, arising within the said county or coming within  
12 the jurisdiction of the court as provided by the general  
13 laws of this state and as hereinafter provided; and inde-  
14 pendent of the foregoing for the trial of certain chancery  
15 causes, as hereinafter limited and defined, it being the  
16 intent and purpose of this act to create a court of limit-  
17 ed jurisdiction for the purposes herein set forth.

Sec. 2. *Jurisdiction.*—The said domestic relations court  
2 shall have jurisdiction within the said county of Cabell,  
3 concurrent with the circuit court, of all matters and causes  
4 arising out of or pertaining to annulment of marriages,  
5 separate maintenance suits, divorce, alimony, the custody  
6 and maintenance of children of litigants and the adjudi-  
7 cation of property rights arising out of the same, and all  
8 other matters and causes coming within the purview of  
9 chapter forty-eight of the code of West Virginia, one

10 thousand nine hundred thirty-one, and of all amend-  
11 ments and reenactments thereof concerning domestic re-  
12 lations; of all matters and causes coming within the pur-  
13 view of chapter forty-nine of the code of West Virginia,  
14 one thousand nine hundred thirty-one, as enacted by  
15 chapter one, acts of the Legislature of West Virginia, one  
16 thousand nine hundred thirty-six, and of all amendments  
17 and reenactments thereof commonly known as the child  
18 welfare law; of all matters and causes coming within the  
19 purview of chapter eighteen of the code of West Vir-  
20 ginia, one thousand nine hundred thirty-one, and all  
21 amendments and reenactments thereof, commonly called  
22 the general school law; of all matters and causes com-  
23 ing within the purview of chapter forty-eight of the  
24 code of the West Virginia, one thousand nine hundred  
25 thirty-one, and of all amendments and reenactments  
26 thereof, commonly known as the adoption law; and of  
27 all matters and causes coming within the purview of all  
28 other or future acts of the Legislature touching the sub-  
29 ject matter and of any and all said laws, laws and acts of  
30 the amendments and reenactments thereof, and of the  
31 common law of said state relating to the subject matter  
32 thereof. Independently of any of the foregoing matters,  
33 the said domestic relations court shall also have and is  
34 hereby given general equity jurisdiction concurrent with  
35 the circuit court, excepting in cases involving the  
36 enforcement of criminal laws and labor disputes, and ex-  
37 cepting cases where it shall appear from the pleadings  
38 that matter or thing in controversy exceeds in value the  
39 sum of one hundred thousand dollars. The proceedings  
40 and modes of procedure and power and jurisdiction con-  
41 ferred by law upon the circuit court or the common pleas  
42 court in any and all of said matters and causes are here-  
43 by conferred upon and shall be exercised by said domes-  
44 tic relations court.

2     Sec. 4. *Salary of Judge.*—The judge of the domestic  
3 relations court of Cabell county shall receive for his serv-  
4 ices seven thousand two hundred dollars, annually, pay-  
5 able monthly in installments beginning on the first day  
of July, one thousand nine hundred forty-nine, which

6 amount shall be provided for and paid by the county  
7 court, out of the treasury of said county, which provi-  
8 sion as to salary shall not repeal the existing provision  
9 until the said first day of July, one thousand nine hun-  
10 dred forty-nine.

11 All acts or parts of acts inconsistent or in conflict with  
12 this act are hereby repealed.

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## CHAPTER 141

(House Bill No. 91—By Mr. Leap and Mr. Campbell, of Cabell)

AN ACT to amend and reenact section eight, chapter one hundred sixty-eight, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-one, as amended by chapter one hundred thirty-five, acts of the Legislature, regular session, one thousand nine hundred twenty-nine, relating to the time of holding terms of court of the domestic relations court of Cabell county.

[Passed February 11, 1949; in effect July 1, 1949. Approved by the Governor.]

### Section

8. Terms of domestic relations court.

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

That section eight, chapter one hundred sixty-eight, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-one, as amended by chapter one hundred thirty-five, acts of the Legislature, regular session, one thousand nine hundred twenty-nine, be amended and reenacted to read as follows:

Section 8. *Terms of Domestic Relations Court.*—There  
2 shall be regularly continued and held four terms of the  
3 domestic relations court of Cabell county, West Virginia,  
4 each year, beginning respectively on the first Monday  
5 in March, June, September and December.



## CHAPTER 142

(Com. Sub. for House Bill No. 48—Originating in the House Committee on the Judiciary)

AN ACT creating the Tri-State Airport Authority, providing for membership therein, for the acquisition by it of real estate and personal property and the construction, maintenance and operation of an airport, granting it the power of eminent domain and tax exemption for its property, funds and obligations, and providing for contributions to its funds and the issuance of revenue bonds.

[Passed March 5, 1949; in effect from passage. Approved by the Governor.]

### Section

1. Tri-state airport authority authorized.
2. Authority a corporation.
3. Purposes.
4. Members of authority.
5. Powers.
6. Participation.
7. Funds and accounts.
8. Property, bonds and obligations of authority exempt from taxation.
9. Sale or lease of property.
10. Employees to be covered by workmen's compensation.
11. Liberal construction of act.
12. Provisions severable.

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

### Section 1. *Tri-State Airport Authority Authorized.*—

- 2 The county court of Cabell county, the city of Huntington
- 3 of Cabell and Wayne counties, the county court of Wayne
- 4 county, the city of Kenova, in Wayne county, and the
- 5 town of Ceredo, in Wayne county, or any one or more
- 6 of them, jointly and severally, are hereby authorized to
- 7 create and establish a public agency to be known as the
- 8 "Tri-state Airport Authority" in the manner and for the
- 9 purposes hereinafter set forth.

- Sec. 2. *Authority a Corporation.*—The authority when
- 2 created, and the members thereof, shall constitute a pub-
  - 3 lic corporation and as such shall have perpetual succes-
  - 4 sion, may contract and be contracted with, sue and be
  - 5 sued, and have and use a common seal.

Sec. 3. *Purposes.*—The authority is hereby authorized  
2 and empowered to acquire, equip, construct, maintain,  
3 and operate an airport or landing field and appurtenant  
4 facilities in Wayne county on Twelve Pole creek, west of  
5 the corporate limits of the city of Huntington and south  
6 of the corporate limits of the city of Kenova and the  
7 town of Ceredo, to serve the tri-state area in which it is  
8 located.

Sec. 4. *Members of Authority.*—The management and  
2 control of the Tri-state Airport Authority, its property,  
3 operations, business and affairs shall be lodged in a board  
4 of nine or more persons who shall be known as members  
5 of the authority and who shall be appointed for terms  
6 of three years each by the public and private corporations  
7 contributing to the funds of the authority, in such pro-  
8 portion and manner as may from time to time be pro-  
9 vided in the by-laws adopted by the authority; provided  
10 that the first board shall be appointed as follows:

11 (1) The county court of Cabell county shall appoint  
12 two members for terms of two and three years, respec-  
13 tively;

14 (2) The city of Huntington shall appoint two members  
15 for terms of two and three years, respectively;

16 (3) The county court of Wayne county shall appoint  
17 two members for terms of one and two years, respec-  
18 tively;

19 (4) The city of Kenova shall appoint one member for  
20 the term of three years;

21 (5) The town of Ceredo shall appoint one member for  
22 the term of one year;

23 (6) Huntington industrial corporation, a non-profit  
24 civic corporation, which has contributed funds to the  
25 project, shall appoint one member for the term of one  
26 year.

Sec. 5. *Powers.*—The Tri-State Airport Authority is  
2 hereby given power and authority as follows:

3 (1) To make and adopt all necessary by-laws, rules and  
4 regulations for its organization and operations not incon-  
5 sistent with law;

6 (2) To increase the number of members of the au-  
7 thority;

8 (3) To elect its own officers, to appoint committees and  
9 to employ and fix the compensation for personnel neces-  
10 sary for its operation;

11 (4) To enter into contracts with any person, firm or  
12 corporation, and generally to do anything necessary for  
13 the purpose of acquiring, equipping, constructing, main-  
14 taining and operating an airport as aforesaid;

15 (5) To delegate any authority given to it by law to any  
16 of its officers, committees, agents or employees;

17 (6) To apply for, receive and use grants in aid, dona-  
18 tions and contributions from any sources;

19 (7) To take or acquire lands by purchase, holding title  
20 thereto in its own name; or failing to agree with the owner  
21 or owners thereof the authority may exercise the power  
22 of eminent domain in the manner provided for condemna-  
23 tion proceedings by chapter fifty-four of the code of West  
24 Virginia.

25 (8) To purchase, own, hold, sell and dispose of personal  
26 property and to sell and dispose of any real estate which  
27 it may have acquired and may determine not to be needed  
28 for its purposes;

29 (9) To borrow money;

30 (10) To raise funds by the issuance and sale of revenue  
31 bonds in the manner provided by the applicable provisions  
32 of article four-a, chapter eight of the code of West Vir-  
33 ginia, it being hereby expressly provided that the Tri-  
34 State Airport Authority is a "municipal authority" within  
35 the definition of that term as used in said article four-a,  
36 chapter eight of the code; and

37 (11) To extend its funds in the execution of the powers  
38 and authority hereby given.

39 Sec. 6. *Participation.*—The county court of Cabell  
40 county, the city of Huntington of Cabell and Wayne coun-  
41 ties, the county court of Wayne county, the city of Kenova,  
42 the town of Ceredo, or any one or more of them, jointly  
43 and severally, are hereby authorized and empowered to  
44 appoint members of the said authority and to contribute  
45 to the cost of acquiring, constructing, equipping, main-

46 taining and operating the said airport and appurtenant  
47 facilities.

48 Any of the foregoing county courts or municipal cor-  
49 porations is hereby authorized and empowered to transfer  
50 and convey to the said authority property of any kind  
51 heretofore acquired by said county court or municipal  
52 corporation for airport purposes.

Sec. 7. *Funds and Accounts.*—Contributions may be  
2 made to the authority from time to time by the various  
3 bodies contributing to its funds and shall be deposited in  
4 such bank or banks as a majority of the members of the  
5 authority may direct and shall be withdrawn therefrom  
6 in such manner as the authority may direct.

7 The authority shall keep strict account of all of its  
8 receipts and expenditures and shall make quarterly re-  
9 ports to the public and private bodies contributing to its  
10 funds containing an itemized account of its operations in  
11 the preceding quarter. The accounts of the authority  
12 shall be regularly examined by the state tax commissioner  
13 in the manner required by article nine, chapter six of the  
14 code of West Virginia.

Sec. 8. *Property, Bonds and Obligations of Authority*  
2 *Exempt from Taxation.*—The authority shall be exempt  
3 from the payment of any taxes or fees to the state or any  
4 subdivisions thereof or to any officer or employee of  
5 the state or other subdivision thereof. The property of  
6 the authority shall be exempt from all local and mu-  
7 nicipal taxes. Bonds, notes, debentures and other evi-  
8 dence of indebtedness of the authority are declared to be  
9 issued for a public purpose and to be public instrumen-  
10 talities, and, together with interest thereon, shall be ex-  
11 empt from taxes.

Sec. 9. *Sale or Lease of Property.*—In the event all of  
2 the public corporations contributing to the funds of the  
3 authority shall so determine the authority shall make  
4 sale of all of its properties and assets and distribute the  
5 proceeds thereof among those contributing to its funds;  
6 or in the event such of the supporting corporations con-  
7 tributing a majority of the funds of said authority shall so

8 determine the authority may lease all of its property and  
9 equipment upon such terms and conditions as the au-  
10 thority may fix and determine.

Sec. 10. *Employees to be Covered by Workmen's Com-  
2 pensation.*—All employees of the authority eligible there-  
3 to shall be deemed to be within the Workmen's Compen-  
4 sation Act of West Virginia and premiums on their com-  
5 pensation shall be paid by the authority as required by  
6 law.

Sec. 11. *Liberal Construction of Act.*—It is the purpose  
2 of this act to provide for the acquisition, construction,  
3 maintenance and operation of an airport in a prudent and  
4 economical manner and this act shall be liberally con-  
5 strued as giving to the authority full and complete power  
6 reasonably required to give effect to the purposes hereof.  
7 The provisions of this act are in addition to and not in  
8 derogation of any power existing in the county courts and  
9 municipal corporations herein named under any consti-  
10 tutional, statutory or charter provisions which they or  
11 either of them may now have, or may hereafter acquire  
12 or adopt.

Sec. 12. *Provisions Severable.*—The several sections  
2 and provisions of this act are severable, and if any section  
3 or provision hereof shall be held unconstitutional, all the  
4 remaining sections and provisions of the act shall never-  
5 theless remain valid.

## CHAPTER 143

(House Bill No. 47—By Mrs. Walker)

AN ACT to authorize and empower the county court of Fayette  
county to transfer the unexpended balances in the dog  
tax fund to the general county fund of said county.

[Passed February 16, 1949; in effect from passage. Approved by the Governor.]

### Section

1. Fayette county court authorized to transfer dog tax fund.

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

Section 1. *Fayette County Court Authorized to Transfer Dog Tax Fund.*—The county court of Fayette 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 said dog tax fund, to the general county fund.

The county court of Fayette county is hereby authorized and empowered to transfer and expend, from time to time and as it may appear necessary and advisable, any part of the dog tax fund to the general county fund, and to be used and expended as a part of the general county fund, providing that at least five hundred dollars shall remain in the dog tax fund for the payment and satisfaction of all claims and expenses against said dog tax fund.

All acts or parts of acts inconsistent herewith are hereby repealed, insofar as they may apply to Fayette county.

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## CHAPTER 144

(Senate Bill No. 174—By Mr. Taylor, of Fayette)

AN ACT authorizing the common council of the municipality of Fayetteville, Fayette county, to immediately enter into a contract for the purchase of a fire truck and necessary fire-fighting equipment for immediate and continuing fire protection, and to authorize and empower the council to obligate the revenues of the municipality for said purpose for the fiscal year beginning July first, one thousand nine hundred forty-nine, not to exceed the sum of two thousand five hundred dollars.

[Passed March 12, 1949; in effect ninety days from passage. Approved by the Governor.]

### Section

1. Town of Fayetteville authorized to obligate revenues for purchase of fire fighting equipment.

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

Section 1. *Town of Fayetteville Authorized to Obligate Revenues for Purchase of Fire Fighting Equipment.*—The common council of the municipality of the town of Fayetteville, Fayette county, is hereby authorized and empowered to immediately enter into a contract for the purchase of a needed fire truck and fire-fighting equipment for immediate and continued fire protection for the municipality, and in order to meet the full and complete purchase price for said fire truck and fire-fighting equipment said council is hereby further authorized and empowered, as a part of said contract, to obligate the revenues of the municipality for the fiscal year beginning July first, one thousand nine hundred forty-nine, in an amount up to but not exceeding the sum of twenty-five hundred dollars.

—C—

## CHAPTER 145

(House Bill No. 314—By Mr. Kidd)

AN ACT authorizing the county court of Gilmer county, West Virginia, to pay the sum of one thousand six hundred dollars, from the general fund of said county, to the Gilmer County Volunteer Fire Department, Inc., or the creditors thereof, for the purpose of paying the indebtedness of said volunteer fire department occasioned by the purchase of fire-fighting equipment.

[Passed February 28, 1949; in effect from passage. Approved by the Governor.]

**Section**

1. Gilmer county court authorized to pay indebtedness of Gilmer county volunteer fire department.

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

Section 1. *Gilmer County Court Authorized to Pay Indebtedness of Gilmer County Volunteer Fire Department.*—The county court of Gilmer county, West Virginia, is hereby authorized to pay from the general county

5 fund of said county the sum of one thousand six hundred  
6 dollars to retire the indebtedness of the Gilmer County  
7 Volunteer Fire Department, Inc., occasioned by the pur-  
8 chase of fire-fighting equipment by said volunteer fire  
9 department. Said sum may be paid to said volunteer fire  
10 department, or to the creditors thereof, for the indebted-  
11 ness incurred in the purchase of said fire-fighting equip-  
12 ment.

13 The sum herein authorized to be expended by the Gil-  
14 mer county court is in consideration of the said volunteer  
15 fire department using the said equipment and other fire-  
16 fighting equipment owned by it for fire protection and  
17 fire-fighting throughout Gilmer county.

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## CHAPTER 146

(Senate Bill No. 178—By Mr. Bean)

AN ACT to authorize the county court of Hardy county to use unexpended funds and surpluses in the general fund of said county for the purpose of creating a special fund for the building of a new jail, and to expend for such purposes the fund so created.

[Passed February 25, 1949; in effect from passage. Approved by the Governor.]

### Section

1. Hardy county court authorized to create a special jail fund.

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

- Section 1. *Hardy County Court Authorized to Create a Special Jail Fund.*—The county court of Hardy county is hereby authorized and empowered from year to year to use any unexpended funds of said county and any surplus in the general county fund for the purpose of creating a special fund for the building of a new jail, and said county court is also authorized to expend for such purposes the funds so created.



## CHAPTER 147

(House Bill No. 64—By Mr. Peters and Mr. Davis)

AN ACT to amend and reenact chapter one hundred seventy-one, acts of the Legislature, regular session, one thousand nine hundred forty-seven, relating to the authorization of the judge of the thirteenth judicial circuit of West Virginia to appoint a law assistant, fixing his qualifications and salary, and requiring the county court of Kanawha county to provide the manner of payment of such salary.

[Passed February 17, 1949; in effect July 1, 1949. Approved by the Governor.]

### Section

1. Law assistant for thirteenth judicial circuit; qualifications; salary.

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

That chapter one hundred seventy-one, acts of the Legislature, regular session, one thousand nine hundred forty-seven, be amended and reenacted to read as follows:

Section 1. *Law Assistant for Thirteenth Judicial Circuit; Qualifications; Salary.*—On or after the effective date of this act, the judge of the circuit court of Kanawha county, West Virginia, (thirteenth judicial circuit), may appoint a law assistant, who shall be a person duly licensed to practice law in this state, and who shall discharge such secretarial duties as may be assigned to him by the judge; said law assistant, while acting as such, shall not engage in the practice of law but shall devote his time to the duties of his office, and may be removed and his successor appointed at any time by the judge. Said law assistant shall receive a salary of not less than five thousand dollars nor more than six thousand dollars per year, to be fixed by the county court, payable monthly, and the county court of Kanawha county shall annually, at its levy session, provide for the payment out of general county funds the amount of the salary so fixed.

## CHAPTER 148

(House Bill No. 58—By Mr. Peters)

AN ACT to amend and reenact section eight, chapter one hundred seventy-two, acts of the Legislature of West Virginia, regular session, one thousand nine hundred forty-seven, relating to the domestic relations court of Kanawha county.

[Passed February 11, 1949; in effect July 1, 1949. Approved by the Governor.]

### Section

8. Terms of court; maturity of causes; procedure; appointment of probation staff, medical, clerical and secretarial assistants and fixing salaries.

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

That section eight, chapter one hundred seventy-two, acts of the Legislature of West Virginia, regular session, one thousand nine hundred forty-seven, be amended and reenacted to read as follows:

Section 8. *Terms of Court; Maturity of Causes; Procedure; Appointment of Probation Staff, Medical, Clerical, and Secretarial Assistants and Fixing Salaries.*—For the purpose of maturing, docketing, hearing and determining all matters, suits, petitions and other proceedings properly determinable in the domestic relations court of Kanawha county there shall be regularly continued and held four terms of court each year, beginning on the second Monday in February, May, August and November. Special terms of said court may be called and held whenever, in the discretion of the judge of the court, public interest requires such special terms. The judge of the court shall have like jurisdiction and authority, in vacation of the court, to make and enter such proper orders in any matter, suit, action, petition or proceeding pending in the court as the judges of the circuit courts have under the laws of the state. All matters arising under the jurisdiction of the court, other than suits for divorce, separation and annulment of marriages, may be heard and determined either in term time or in vacation: *Provided, however,* That proper notice of any such proceedings be given as provided by law for the particular case.

23 The mode of procedure in causes instituted in this  
24 court shall be the same as that prescribed for the circuit  
25 court in similar causes. The court is authorized and  
26 empowered to appoint such additional officers, divorce  
27 commissioners, commissioners in chancery, special com-  
28 missioners, jury commissioners, and probation officers,  
29 and such medical, clerical and secretarial assistance as  
30 shall enable the court to discharge all the duties required  
31 of it under the provision of this act, and the general laws  
32 of the state. The judge may appoint a chief probation  
33 officer, assistant probation officers, and necessary medi-  
34 cal, clerical, secretarial and other necessary assistants  
35 to be paid by the county court. Such appointments shall  
36 be made by the judge and the appointees shall serve  
37 during the pleasure of the judge.

38 The chief probation officer shall receive as compensa-  
39 tion for his or her services an annual salary of not less  
40 than twenty-four hundred dollars nor more than forty-  
41 eight hundred dollars to be determined by the judge.  
42 Assistant probation officers and medical assistants shall  
43 receive as compensation an annual salary of not less than  
44 two thousand dollars nor more than three thousand dol-  
45 lars to be determined by the judge. Clerical and secre-  
46 tarial assistants shall receive as compensation for his or  
47 her services an annual salary of not less than eighteen  
48 hundred dollars nor more than twenty-seven hundred  
49 dollars to be determined by the judge. In addition to  
50 the annual salary herein provided for the chief probation  
51 officer and each assistant probation officer and medical  
52 assistants, they shall be reimbursed by the county court  
53 by reason of his or her necessary expenses actually in-  
54 curred in the performance of official duties including an  
55 allowance of seven cents a mile for his or her automobile  
56 driven in the performance of official duties. The appoint-  
57 ment of the chief probation officer, assistant probation  
58 officers, medical, clerical and secretarial assistants, when  
59 made by the judge, shall be entered on the order book of  
60 the court. A copy of the order of appointment shall be  
61 transmitted to the clerk of the county court. Thereupon,  
62 the county court shall make provision for payment and  
63 shall pay the salaries of the chief probation officer, as-

64 sistant probation officers, medical, clerical and secretarial  
65 assistants as shown by the order of appointment. The  
66 annual salaries provided for in said order of appointment  
67 shall be paid in equal monthly installments. Expenses  
68 and mileage accounts of the chief probation officer, as-  
69 sistant probation officers, and medical assistants shall  
70 be itemized and verified and presented to and paid by  
71 the county court, if such accounts are approved by the  
72 judge. The county court shall provide such office space,  
73 equipment and supplies for the probation staff, clerical,  
74 secretarial and medical assistants as the judge shall deem  
75 necessary and adequate.

76 The judge shall maintain a political balance between  
77 the two major political parties of Kanawha county in  
78 his appointments of divorce commissioners, commis-  
79 sioners in chancery and special commissioners, so that at no  
80 time will the number of either divorce commissioners or  
81 commissioners in chancery or of special commissioners  
82 of one political affiliation exceed by more than one the  
83 number of such commissioners affiliated with the other  
84 major political party of the county. The court shall make  
85 provision for reference of such divorce and other mat-  
86 ters as may be proper from time to time to said commis-  
87 sioners in rotation so as to effect insofar as practicable,  
88 an equitable distribution of work between and among  
89 them. The judge of the court shall have power to make  
90 and promulgate such rules for the transaction of the  
91 business of the court as may be necessary: *Provided*, That  
92 all such rules shall be in conformity with the laws of  
93 the state of West Virginia and with any rules promul-  
94 gated by the supreme court of appeals of this state.

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## CHAPTER 149

(Senate Bill No. 195—By Mr. Love)

AN ACT to amend and reenact section nine, chapter ninety-four, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-seven, relating

to the salary of the judge of the intermediate court of Kanawha county, West Virginia.

[Passed March 11, 1949; in effect ninety days from passage. Approved by the Governor.]

Section

9. Salary of the judge of the intermediate court of Kanawha county, West Virginia.

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

That section nine, chapter ninety-four, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-seven, be amended and reenacted to read as follows:

Section 9. *Salary of the Judge of the Intermediate Court of Kanawha County, West Virginia.*—The judge of the intermediate court of Kanawha county, West Virginia, beginning on the first day of January, one thousand nine hundred fifty-one, shall receive as a salary for his services as judge of said court the sum of eight thousand five hundred dollars per annum, payable out of the county treasury of said Kanawha county, in equal monthly installments, as the salaries of the other officers of said county are paid. The salary of said judge shall continue as provided in section nine, chapter ninety-four, of the acts of the Legislature, regular session, one thousand nine hundred twenty-seven, until the first day of January, one thousand nine hundred fifty-one.

## CHAPTER 150

(House Bill No. 40—By Mr. Doring)

AN ACT to amend and reenact section four, chapter sixty-nine, acts of the Legislature, regular session, one thousand nine hundred nineteen, as amended and reenacted by section four, chapter twenty-seven, acts of the Legislature, extraordinary session, one thousand nine hundred thirty-two, and as last amended by section twenty-one, chapter eighty-

two, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, all relative to the salary of the judge of the criminal court of Marion county.

[Passed March 12, 1949; in effect July 1, 1949. Approved by the Governor.]

**Section**

4. Salary of Marion county criminal court judge.

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

That section four, chapter sixty-nine, acts of the Legislature, regular session, one thousand nine hundred nineteen, as amended and reenacted by section four, chapter twenty-seven, acts of the Legislature, extraordinary session, one thousand nine hundred thirty-two, and as last amended by section twenty-one, chapter eighty-two, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, be amended and reenacted to read as follows:

Section 4. *Salary of Marion County Criminal Court*

2 *Judge.*—The judge of said criminal court shall receive for  
3 his services a salary of six thousand dollars per year, said  
4 amount to be fixed and paid from year to year by the  
5 county court of said county, out of the funds of said  
6 county, as provided by statute.

## CHAPTER 151

(Senate Bill No. 213—By Mr. Jones)

AN ACT to authorize and empower the county court of Mason county to transfer the unexpended balances in the dog tax fund to the general county fund of said county.

[Passed February 25, 1949; in effect from passage. Approved by the Governor.]

**Section**

1. Mason county court authorized to transfer dog tax fund.

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

Section 1. *Mason County Court Authorized to Transfer*

2 *Dog Tax Fund.*—The county court of Mason county is

3 hereby authorized and empowered to transfer the unex-  
4 pended balances now in the dog tax fund of said county  
5 remaining, and not needed for the payment and satisfac-  
6 tion of all claims and expenses against said dog tax fund,  
7 to the general county fund.

8 The county court of Mason county is hereby authorized  
9 and empowered to transfer and expend, from time to  
10 time and as it may appear necessary and advisable, any  
11 part of the dog tax fund to the general county fund, and  
12 to be used and expended as a part of the general county  
13 fund, providing that at least five hundred dollars shall  
14 remain in the dog tax fund for the payment and satis-  
15 faction of all claims and expenses against said dog tax  
16 fund.

17 All acts or parts of acts inconsistent herewith are hereby  
18 repealed, insofar as they may apply to Mason county.

## CHAPTER 152

(House Bill No. 364—By Mr. Cline)

AN ACT to authorize and empower the county court of Mingo  
county to transfer the unexpended balances in the dog tax  
fund to the general county fund of said county.

[Passed March 5, 1949; in effect ninety days from passage. Approved by the  
Governor.]

### Section

1. Mingo county court authorized to transfer dog tax fund.

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

- Section 1. *Mingo County Court Authorized to Transfer*  
2 *Dog Tax Fund.*—The county court of Mingo county is  
3 hereby authorized and empowered to transfer the unex-  
4 pended balances now in the dog tax fund of said county  
5 remaining, and not needed for the payment and satis-  
6 faction of all claims and expenses against said dog tax  
7 fund, to the general county fund.  
8 The county court of Mingo county is hereby authorized

9 and empowered to transfer and expend, from time to time  
10 and as it may appear necessary and advisable, any part  
11 of the dog tax fund to the general county fund, the same  
12 to be used and expended as a part of the general county  
13 fund, providing that sufficient funds shall remain in the  
14 dog tax fund for the payment and satisfaction of all  
15 claims and expenses against said dog tax fund.

16 All acts or parts of acts inconsistent herewith are here-  
17 by repealed, insofar as they may apply to Mingo County.

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## CHAPTER 153

(House Bill No. 363—By Mr. Cline)

AN ACT to authorize and empower the county court of Mingo county to transfer from the teachers' fund of the Mingo county school district to the general county fund of said county all the unexpended balances of funds which have been secured through dog taxes and which have been paid into and credited to the said school fund.

[Passed March 5, 1949; in effect from passage. Approved by the Governor.]

### Section

1. Transfer of funds by Mingo county court.

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

#### Section 1. *Transfer of Funds by Mingo County Court.*—

- 2 The county court of Mingo county is hereby authorized  
3 and empowered to transfer from the teachers' fund of  
4 the Mingo county school district to the general fund of  
5 said county all the unexpended balances of funds which  
6 have been secured through dog taxes and which have  
7 been paid into and credited to the said school fund.  
8 All acts or parts of acts inconsistent herewith are  
9 hereby repealed, insofar as they may apply to Mingo  
10 county.



## CHAPTER 154

(Senate Bill No. 270—By Mr. Eddy)

AN ACT to amend and reenact chapter one hundred eleven, acts of the Legislature of West Virginia, one thousand nine hundred forty-seven, relating to the authority of the county court of Monongalia county to use unexpended funds or surpluses in any fund of said county for the purpose of creating a special fund for the building of a new courthouse, or for enlarging, remodeling and improving the present courthouse, or to use said fund for the purchase of property from the federal government or any of its agencies, for erecting buildings to be used for county purposes and to expend for such purposes, or for the purpose of removing existing deficits, the fund already so accumulated, or any additional or other fund so created.

[Passed March 11, 1949; in effect from passage. Approved by the Governor.]

### Section

1. Monongalia county court authorized to create a special courthouse and buying and building fund to expend said fund accumulated, or to be accumulated, in connection with a courthouse, or to purchase property from the federal government or any of its agencies, to remove existing deficits, or to erect buildings to be used for county purposes.

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

That chapter one hundred eleven, acts of the Legislature of West Virginia, one thousand nine hundred forty-seven, be amended and reenacted to read as follows:

- Section 1. *Monongalia County Court Authorized to Create a Special Courthouse and Buying and Building Fund to Expend Said Fund Accumulated, or to Be Accumulated, in Connection with a Courthouse, or to Purchase Property from the Federal Government or Any of its Agencies, to Remove Existing Deficits, or to Erect Buildings to Be Used for County Purposes.*—The county court of Monongalia county is hereby authorized and empowered from year to year to use any unexpended funds of said county and any surplus in any county fund for the purpose of creating a special fund for the building of a new courthouse, or

12 for enlarging, remodeling and improving the present  
13 courthouse, or to use said fund for the purchase of prop-  
14 erty from the federal government or any of its agencies,  
15 for erecting buildings to be used for county purposes and  
16 to expend for such purposes, or for the removal of exist-  
17 ing deficits, the fund already so accumulated, and use for  
18 such purposes any additional or other funds so created.

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## CHAPTER 155

(House Bill No. 213—By Mr. Dawson)

AN ACT to authorize and empower the county court of Morgan county to transfer the unexpended balances in the dog tax fund to the general county fund of said county.

[Passed March 5, 1949; in effect from passage. Approved by the Governor.]

### Section

1. Morgan county court authorized to transfer dog tax fund.

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

Section 1. *Morgan County Court Authorized to Transfer Dog Tax Fund.*—The county court of Morgan 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 said dog tax fund, to the general county fund.

The county court of Morgan county is hereby authorized and empowered to transfer, from time to time and as it may appear necessary and advisable, any part of the dog tax fund to the general county fund, the same to be used and expended as a part of the general county fund: *Provided*, That sufficient funds shall remain in the dog tax fund for the payment and satisfaction of all claims and expenses against said dog tax fund.

All acts or parts of acts inconsistent herewith are hereby repealed, insofar as they may apply to Morgan county.

## CHAPTER 156

(House Bill No. 43—By Mr. Burt)

AN ACT to authorize the board of commissioners of the county of Ohio to use all or part of debt levies, not required for bonded indebtedness, for the purpose of the construction, equipment and maintenance of an airport, and a county building, providing for the leasing of temporary quarters during the construction of any county building, and for the construction, equipment and maintenance of any county building in conjunction with the city of Wheeling.

[Passed February 16, 1949; in effect from passage. Approved by the Governor.]

### Section

1. Board of commissioners of the county of Ohio authorized to lay an additional levy, and to use proceeds therefrom for construction and maintenance of an airport and a county building.
2. Inconsistent acts repealed.

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

### Section 1. Board of Commissioners of the County of Ohio

- 2 *Authorized to Lay an Additional Levy, and to Use Pro-*
- 3 *ceeds Therefrom for Construction and Maintenance of an*
- 4 *Airport and a County Building.*—For a period of five years
- 5 commencing with the fiscal year one thousand nine hun-
- 6 dred fifty—one thousand nine hundred fifty-one, in addi-
- 7 tion to the levies heretofore authorized to be laid by
- 8 county courts for general county current expense, and for
- 9 the payment of interest and sinking fund requirements on
- 10 bonded indebtedness incurred subsequent to the passage
- 11 of the tax levy limitation amendment, the board of com-
- 12 missioners of the county of Ohio is hereby authorized
- 13 and empowered to lay such additional levy as may not
- 14 be required for bonded indebtedness, on all of the prop-
- 15 erty in Ohio county, but not to exceed four and nine
- 16 tenths cents on each one hundred dollars' assessed val-
- 17 uation on class I property; nine and eight-tenth cents
- 18 on class II property; and nineteen and six-tenths cents
- 19 on classes III and IV property. The proceeds of said levy
- 20 shall be placed in a separate fund designated "Public
- 21 Improvement Fund", to be used solely for the construc-

tion, equipment and maintenance of an airport, and a county building, and for the leasing of temporary quarters for a county building during any construction period. Any such county building may be constructed, equipped and maintained in conjunction with the city of Wheeling.

Sec. 2. *Inconsistent Acts Repealed.*—All acts and parts of acts inconsistent or in conflict herewith, insofar as the same may be applicable to the county of Ohio, or the said board of commissioners of the county of Ohio, are hereby repealed.

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## CHAPTER 157

(House Bill No. 366—By Mr. Burt)

AN ACT to amend and reenact section seven of an act entitled "An act to establish a county court and a board of commissioners of Ohio county, under the thirty-fourth section of the eighth article of the constitution of the state of West Virginia", approved December thirty-first, one thousand eight hundred seventy-two, as amended by acts of the Legislature, one thousand nine hundred nine, and as further amended, by chapter one hundred thirty-two, acts of the Legislature, one thousand nine hundred twenty-three.

[Passed March 11, 1949; in effect July 1, 1949. Approved by the Governor.]

### Section

7. Board of commissioners of Ohio county; meetings; compensation; powers.

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

That section seven of an act entitled "An act to establish a county court and a board of commissioners of Ohio county, under the thirty-fourth section of the eighth article of the constitution of the State of West Virginia", approved December thirty-first, one thousand eight hundred seventy-two, as amended by the acts of the Legislature, one thousand nine hundred nine, and as further amended by chapter one hundred thirty-

two, acts of the Legislature, one thousand nine hundred twenty-three, be amended and reenacted to read as follows:

Section 7. *Board of Commissioners of Ohio County; Meetings; Compensation; Powers.*—The commissioners  
2 elected as provided in section five shall constitute a board,  
3 to be known as "the Board of Commissioners of the Coun-  
4 ty of Ohio", by which name they may sue and be sued,  
5 and make and use a common seal, and enact ordinances  
6 and by-laws not inconsistent with the laws of this state.  
7 They will meet steadily on the first Monday in every  
8 month, at the court house of their county, and may hold  
9 special and adjourned meetings at any time after their  
10 first meeting after election. They shall elect one of their  
11 number president of the board, and appoint a clerk, who  
12 shall hold his office at their pleasure, and shall keep a  
13 journal of their proceedings, including a record of their  
14 ordinances in a volume separate from the journal of their  
15 proceedings, and shall perform such other services per-  
16 taining to his office as may be by them or by law re-  
17 quired; and whose compensation shall be forty-two hun-  
18 dred dollars annually, which salary shall be paid from  
19 the county treasury and no fees or additional salary  
20 shall be received by said clerk. The said board shall  
21 have the same powers now vested in the board of com-  
22 missioners of Ohio county as to the superintendence  
23 and administration of the internal police and fiscal af-  
24 fairs of the county, including the establishment and reg-  
25 ulation of roads, ways, bridges, public landings, ferries  
26 and mills, the granting of ordinary and other licenses,  
27 with authority to lay and disburse the county levies.  
28 The board shall, in all contested cases, judge of the elec-  
29 tion, qualification and returns of its own members, and  
30 of all county and district officers; and it shall exercise  
31 such other jurisdiction and perform such other duties  
32 as may be prescribed by law. The said commissioners  
33 shall each receive a compensaton of thirty-five hundred  
34 dollars annually, which salary shall be paid from the  
35 county treasury and no fees, commissions or additional  
36 salary shall be received by any of said commissioners.  
37

38 Any commissioner may be indicted for malfeasance, mis-  
39 feasance or neglect of official duty, and, upon conviction  
40 thereof, his office shall become vacant. A vacancy in the  
41 board of commissioners, whether from resignation, re-  
42 moval from the subdivision from which he was elected,  
43 removal from office, death or other cause, shall be filled  
44 by the remaining members of the board.

45 All acts or parts of acts inconsistent herewith are here-  
46 by repealed.

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## CHAPTER 158

(House Bill No. 272—By Mr. File)

AN ACT to amend and reenact section three, chapter one hundred fifty-one, acts of the Legislature, regular session, one thousand nine hundred forty-one, relating to increased levies by the county court of Raleigh county for parks, parkways, bridges, playgrounds, athletic fields, stadiums, swimming pools and recreational centers.

[Passed February 16, 1949; in effect from passage. Approved by the Governor.]

### Section

3. Increase levies.

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

That section three, chapter one hundred fifty-one, acts of the Legislature, regular session, one thousand nine hundred forty-one, be amended and reenacted to read as follows:

Section 3. *Increased Levies.*—In addition to the issuance and sale of bonds for the purposes aforesaid, the county court of Raleigh county may provide funds for any of the purposes aforesaid by increased levies when authorized in the manner prescribed by article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, or any amendments thereto.

## CHAPTER 159

(House Bill No. 382—By Mr. Morgan)

AN ACT to amend chapter one hundred fifteen, acts of Legislature, regular session, one thousand nine hundred forty-three, by adding thereto a new section one-a, relating to the county court of Upshur county accepting title to the Alfred Anderegg property, or any other property, to be maintained and operated as a part of the Four-H Camp program.

[Passed March 9, 1949; in effect from passage. Approved by the Governor.]

### Section

- 1-a. Upshur county court authorized to accept Alfred Anderegg property, or any other property, to be maintained and operated as part of the Four-H Camp program.

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

That chapter one hundred fifteen, acts of Legislature, regular session, one thousand nine hundred forty-three, be further amended, by adding thereto a new section one-a, to read as follows:

- Section 1-a. *Upshur County Court Authorized to Accept Alfred Anderegg Property, or any Other Property, to be Maintained and Operated as Part of the Four-H Camp Program.*—The county court of Upshur county is hereby authorized to accept title to the Alfred Anderegg property, consisting of one hundred and twenty-five acres, more or less, and improvements thereon, now held in trust for this purpose, in name of Jerome V. Hall, trustee, or any other property, located at Selbyville, Upshur county, to be maintained and operated by the county court as a part of, and in connection with the Four-H Camp program, as authorized by this chapter.

3

## CHAPTER 160

(Senate Bill No. 256—By Mr. McKown)

AN ACT to authorize the board of education of Wayne county to pay F. M. Cassell, former coach of Wayne county high

school, money expended by him for the reconditioning of athletic equipment for use in and about said high school.

[Passed March 11, 1949; in effect from passage. Approved by the Governor.]

**Section**

1. Board of education of Wayne county authorized to pay certain money to F. M. Cassell, former coach of Wayne county high school.

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

Section 1. *Board of Education of Wayne County Authorized to Pay Certain Money to F. M. Cassell, Former Coach of Wayne County High School.*—The board of education of Wayne county, West Virginia, is hereby authorized to pay to F. M. Cassell, former coach of Wayne county high school, the sum of four hundred forty-eight dollars to cover the amount expended by him, including interest to July first, one thousand nine hundred forty-nine, for the reconditioning of athletic equipment for use in and about the Wayne county high school, but never reimbursed to him.

## CHAPTER 161

(House Bill No. 354—By Mr. Tucker)

AN ACT to authorize the county court of Wayne county to convey to the town of Wayne, a municipal corporation, a memorial building and lot inside the corporate limits of said town, and to convey to the board of education of Wayne county, a body corporate, real estate within Westmoreland district of said Wayne county, purchased by the county court of said county, for the construction of a war memorial football stadium.

[Passed March 9, 1949; in effect from passage. Approved by the Governor.]

**Section**

1. Wayne county court hereby authorized to convey to the town of Wayne a memorial building and lot.
2. County court authorized to convey to the board of education of Wayne county real estate within Westmoreland district.



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

Section 1. *Wayne County Court Hereby Authorized to Convey to the Town of Wayne a Memorial Building and Lot.*—The county court of Wayne county, West Virginia, is authorized to convey and transfer to the town of Wayne, a municipal corporation, a memorial building and lot, located within the corporate limits of said town, to be operated or leased by said town of Wayne to the American Legion and/or Veterans of Foreign Wars, for the benefit of the veterans of World Wars I and II and for other public purposes.

Sec. 2. *County Court Authorized to Convey to the Board of Education of Wayne County Real Estate Within Westmoreland District.*—The said county court is hereby authorized to transfer and convey to the board of education of the county of Wayne real estate located within Westmoreland district of said county, that part of said real estate having been purchased by the said county court for the purposes of constructing a war memorial football stadium, as authorized by chapter one hundred seventy-seven, acts of the Legislature, regular session, one thousand nine hundred forty-five.

## CHAPTER 162

(House Bill No. 147—By Mr. Burt)

AN ACT to authorize and empower the city of Wheeling, a municipal corporation, to temporarily invest the proceeds of its July first, one thousand nine hundred forty, general obligation bonds and held by it for use in the construction, in conjunction with the board of commissioners of Ohio county, West Virginia, of a new city-county building for said city and county, in certain designated securities.

[Passed March 5, 1949; in effect from passage. Approved by the Governor.]

### Section

1. Authorization of the city of Wheeling to make temporary investment of proceeds of sale of bonds issued for construction of city-county building.
2. Changes in investment.
3. Inconsistent acts repealed.

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

Section 1. *Authorization of the City of Wheeling to Make Temporary Investment of Proceeds of Sale of Bonds Issued for Construction of City-County Building.*—The city of Wheeling, a municipal corporation, is hereby authorized and empowered to temporarily invest the portion of the proceeds received by it from the sale of its one thousand nine hundred forty general obligation bonds issued for the construction, in conjunction with the board of commissioners of Ohio county, West Virginia, of a city-county building for said city and county, in bonds or obligations of the United States or in bonds of which both principal and interest are guaranteed by the United States, or in bonds of the state of West Virginia, or in bonds of any county, city, town, village or school district of the state of West Virginia: *Provided, however,* That before making such investment, the city of Wheeling shall obtain from the sinking fund commission of the state of West Virginia the approval in writing of said commission to the proposed investment.

Sec. 2. *Changes in Investment.*—The city of Wheeling, after obtaining like approval from the sinking fund commission of the state of West Virginia, may make such changes in said investment as may, in its judgment, be necessary for the safety and protection of the proceeds of said bond issue from time to time during the period that said proceeds are temporarily invested and until they are needed for the purposes for which said bonds were issued.

Sec. 3. *Inconsistent Acts Repealed.*—All acts, or parts of acts, inconsistent herewith, are hereby repealed.

## CHAPTER 163

(Senate Bill No. 255—By Mr. Wylie)

AN ACT to establish a court of limited jurisdiction within the county of Wyoming, to be known and designated as the

"Criminal Court of Wyoming County," and prescribing the limitations therefor.

[Passed March 11, 1949; in effect July 1, 1949. Approved by the Governor.]

### **Criminal Court of Wyoming County.**

#### **Section**

1. Court established.
2. Jurisdiction.
3. Judge; qualifications; election and term.
4. Powers and jurisdiction as to criminal cases.
5. Power to punish for contempt.
6. Supplies; seal, records of court and certificate of judge.
7. Clerk; powers, duties and compensation.
8. Salary of judge.
9. Compensation of sheriff; bailiff.
10. Terms of court.
11. Where court held.
12. Execution of process of court; duties of sheriff of Wyoming county; fees of sheriff.
13. Jurors; impaneling and compensation thereof.
14. Certification of cases to circuit court; election of special judge.
15. Appeals.
16. Petition to circuit court in appeals; hearing and determination.
17. Procedure on appeal.
18. Appeals to supreme court of appeals.
19. Affirming or reversing judgment or order by circuit court.
20. Contested elections.
21. Filling vacancy in office of judge.
22. Removal of judge.
23. Taxation of costs.
24. Application of general law to court.
25. General criminal jurisdiction granted court.
26. Extraordinary remedies.
27. Juries.
28. West Virginia reports and acts to be furnished judge.
29. Appointment of judge; first term of court.
30. Court reporter.

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

Section 1. *Court Established.*—A court of limited jurisdiction is hereby established within and for the county of Wyoming, to be held and presided over by a judge to be selected as hereinafter provided, which court shall be named and designated as the "Criminal Court of Wyoming County."

Sec. 2. *Jurisdiction.*—The court shall have exclusive jurisdiction within the county of Wyoming concurrent with the circuit court of Wyoming county, in all criminal causes, both misdemeanor and felony, subject to the right

5 of appeal to the circuit court of Wyoming county, as here-  
6 inafter provided.

Sec. 3. *Judge; Qualifications; Election and Term.*—The  
2 judge of said court shall be a resident member of the bar  
3 of Wyoming county and shall have the same qualifica-  
4 tions as a circuit judge. A judge shall be elected for said  
5 court at the general election in this state to be held on  
6 Tuesday after the first Monday in November, one thou-  
7 sand nine hundred fifty and every eight years thereafter,  
8 to be held by the legal voters of said county. His term of  
9 office shall be for eight years beginning on the first day  
10 of January next succeeding said election, and he shall,  
11 except as herein otherwise provided, be subject to the  
12 laws in force governing circuit judges.

Sec. 4. *Powers and Jurisdiction as to Criminal Cases.*—  
2 All powers and jurisdiction conferred by law upon circuit  
3 courts in the trial of criminal cases and proceedings, and  
4 the modes and procedures authorized therein, within the  
5 county of Wyoming, are hereby conferred upon and shall  
6 be exercised by the criminal court of Wyoming county,  
7 and the judge of said court shall have the same powers  
8 in vacation as are now, or may hereafter be, conferred  
9 upon the judge of the circuit court of Wyoming county  
10 in respect of cases, matters and proceedings within the  
11 jurisdiction of said criminal court.

Sec. 5. *Power to Punish for Contempt.*—The said crim-  
2 inal court shall have the same powers to punish for con-  
3 tempt as are conferred by law upon the circuit court.

Sec. 6. *Supplies; Seal; Records of Court and Certificate*  
2 *of Judge.*—The county court of Wyoming county shall  
3 provide all record books and other books and stationery  
4 that may be necessary, and likewise a seal for said crim-  
5 inal court. Full faith and credit shall be given to the  
6 records of said court and to the certificate of its judge or  
7 clerk, whether the seal of said court be affixed thereto  
8 or not, in like manner and with like effect as if the same  
9 were recorded in the circuit court, or certificate of the  
10 judge or clerk of the circuit court similarly authenticated.

Sec. 7. *Clerk; Powers, Duties and Compensation.*—The

2 clerk of the circuit court of Wyoming county shall be  
3 ex officio clerk of the criminal court and perform the  
4 duties thereof, and shall charge the same fees for the  
5 same services as are now allowed by law for similar serv-  
6 ices to the clerk of the circuit court, and in the discharge  
7 of his duties as clerk of the criminal court he shall be sub-  
8 ject to all statutes relating to the clerk of the circuit court.  
9 Process and orders of the court, in the exercise of its  
10 jurisdiction, shall be signed by the clerk thereof and be  
11 directed to the sheriffs of the proper counties wherein  
12 the same are to be executed, and they shall be executed  
13 in like manner, and with the same effect, as process issu-  
14 ing from the circuit court of said county. The clerk of the  
15 circuit court shall not receive any additional personal  
16 compensation for these services, except that prescribed  
17 as his salary as clerk of the circuit court of said county  
18 by the statutes that may now or hereafter be in effect.

Sec. 8. *Salary of Judge.*—The said judge for his serv-  
2 ices shall receive six thousand dollars per annum, which  
3 shall be paid monthly, in equal installments, from the  
4 county treasury of Wyoming county.

Sec. 9. *Compensation of Sheriff; Bailiff.*—The sheriff  
2 shall be allowed the same compensation for attendance  
3 upon said court as is now allowed for attendance upon  
4 the circuit court, and the court bailiff of the circuit court  
5 shall be the bailiff of the criminal court.

Sec. 10. *Terms of Court.*—There shall be four terms of  
2 said court held in each year, commencing on the fourth  
3 Monday of February, fourth Monday of May, fourth Mon-  
4 day of August, and the fourth Monday of November. Ad-  
5 journed and special terms of court may be called and  
6 held as prescribed for special and adjourned terms of the  
7 circuit court.

Sec. 11. *Where Court Held.*—Said terms of said court  
2 shall be held in Pineville, in the county of Wyoming, at  
3 the courthouse thereof.

Sec. 12. *Execution of Process of Court; Duties of Sher-  
2 iff of Wyoming County; Fees of Sheriff.*—The sheriff of  
3 Wyoming county and the sheriffs of the several counties

4 of the state shall, by themselves or their deputies, exe-  
5 cute all process of said court, or issued by the clerk there-  
6 of, directed to them, respectively, and all process emanat-  
7 ing from said court or issued by the clerk thereof shall  
8 be directed to and executed by them in the same manner  
9 as is provided by law as to process issuing from the circuit  
10 court or its clerk, and the sheriff of Wyoming county shall  
11 perform the same duties and services for the criminal  
12 court of Wyoming county as he now by law is required  
13 to perform for the circuit court of said county, and in the  
14 execution of process, rules and orders of said court the  
15 said officer shall have the same powers and rights, be  
16 subject to the same liabilities, govern himself by the same  
17 rules and principles of law and the statutes of the state,  
18 and be entitled to the same fees, as though the process  
19 issued from the circuit court of said county.

Sec. 13. *Jurors; Impaneling and Compensation There-*  
2 *of.*—The grand jurors and the petit jurors for said court  
3 shall be chosen and impaneled in the same manner as  
4 they are chosen and impaneled in the circuit court, and  
5 shall receive the same compensation, subject to amend-  
6 ments of state laws involving the pay of jurors in felony  
7 cases.

Sec. 14. *Certification of Cases to Circuit Court; Elec-*  
2 *tion of Special Judge.*—If the judge of said court in his  
3 judgment, cannot properly preside at the hearing of any  
4 case pending therein, said case may, in his discretion, be  
5 certified to, and the original papers together with the  
6 copy of orders of said court, filed in the circuit court of  
7 said county, and the case shall be docketed therein and  
8 proceeded with therein, as though the case had originally  
9 been brought and proceedings therein had in the circuit  
10 court. When for any cause the judge of said criminal  
11 court is incapable of acting or is absent, a special judge  
12 may be elected in the same manner as a special judge  
13 for the circuit court, and he be governed in all respects  
14 so far as applicable by the laws governing special judges  
15 in the circuit court, and shall be allowed fifteen dollars  
16 a day for said services, to be paid out of the county treas-  
17 ury of Wyoming county.

Sec. 15. *Appeals.*—Appeals may be allowed, and writs of error and supersedeas awarded to the judgments, decrees and orders of said court by the circuit court of said county, or the judge thereof in vacation, in the following cases:

- (1) In any criminal case wherein the right of appeal would have been had to the supreme court of West Virginia should the trial have been held in the circuit court of Wyoming county.
- (2) In any case where there is an order granting a new trial or rehearing, and in such cases an appeal may be taken from the order without waiting for said new trial or rehearing to be had.

Sec. 16. *Petition to Circuit Court in Appeals; Hearing and Determination.*—Any person who is a party to any such controversy wishing to obtain an appeal, or writ of error in the cases named in the foregoing section may present to the circuit court of Wyoming county, or the judge thereof in vacation, a petition therefor and chapter fifty-eight of the code of West Virginia, insofar as it concerns appeals from court of record of limited jurisdiction shall, so far as applicable, govern the proceedings of such appeal, or writ of error as to the duties of the petitioner and the said court and clerk thereof: *Provided, however,* That such petition shall be heard and determined upon the original papers of the cause and the recorded orders and decrees in lieu of a transcript thereof, and in case of oral testimony having been taken in the case, a transcript thereof, duly certified by the stenographer, or other persons taking the same, shall be held and treated as part of the original papers, and the court may likewise consider an agreed statement of facts, and in case the evidence in the trial below was not taken down and preserved, a certificate of facts made by the judge of the criminal court may be considered.

Sec. 17. *Procedure on Appeal.*—Every appeal, or writ of error from said court shall be docketed in the circuit court of Wyoming county and shall be proceeded with in the same manner as appeals, or writs of error are proceeded in, heard and determined in the supreme court

6 of appeals. Rules governing the procedure in these mat-  
7 ters shall be promulgated by said circuit court.

Sec. 18. *Appeals to Supreme Court of Appeals.*—In a  
2 case wherein the appeal or writ of error is to the circuit  
3 court, and the court or judge thereof deems the judgment  
4 or order plainly right, and rejects it on this ground, if  
5 the order or rejection so state, no further petition shall  
6 afterwards be presented for the same purpose, but the  
7 petition and order of rejection with transcript of the  
8 record may be presented to the supreme court of appeals,  
9 or judges thereof in vacation, for an appeal from said  
10 order of rejection, if the matter is one of which said  
11 supreme court of appeals has jurisdiction, and, if allowed,  
12 the same proceedings may be had thereon as if the same  
13 was a petition originally from the circuit court of said  
14 county to the supreme court of appeals.

Sec. 19. *Affirming or Reversing Judgment or Order by*  
2 *Circuit Court.*—The said circuit court, where an appeal,  
3 writ of error or supersedeas has been allowed by the said  
4 court or the judge thereof in vacation, shall, upon the  
5 hearing thereof, affirm said judgment or order, if there be  
6 no error therein prejudicial to the appellant, or reverse  
7 the same whole or in part if erroneous, and if reversed,  
8 remand the same back to said criminal court to be fur-  
9 ther proceeded with and finally determined: *Provided,*  
10 *however,* That from any action of the circuit court in  
11 affirming or reversing any order or judgment of the crim-  
12 inal court an appeal or writ of error shall lie to the su-  
13 preme court of appeals.

Sec. 20. *Contested Elections.*—If the office of judge of  
2 said court be contested, the contest shall be held and  
3 determined in the same manner as the election of judges  
4 of the circuit court are determined.

Sec. 21. *Filling Vacancy in Office of Judge.*—If from  
2 any cause the office of judge of said court shall become  
3 vacated, the vacancy shall be filled in the same manner  
4 as in the case of vacancy in the office of judge of the cir-  
5 cuit court.



Sec. 22. *Removal of Judge.*—The judge of said court  
2 may be removed from office for the same reasons and in  
3 the same manner as judges of the circuit court.

Sec. 23. *Taxation of Costs.*—In the taxation of costs  
2 in said court, the clerk and court shall be governed by  
3 the same rules and provisions of law as are provided for  
4 the circuit court.

Sec. 24. *Application of General Law to Court.*—Chap-  
2 ter fifty-one of the code of West Virginia shall apply to  
3 the criminal court of Wyoming county in the same man-  
4 ner and to the same extent that it does to the circuit  
5 courts of the state, within the scope and purpose of this  
6 act.

Sec. 25. *General Criminal Jurisdiction Granted Court.*  
2 —Chapters sixty-one and sixty-two of the code of West  
3 Virginia shall apply to the criminal court of Wyoming  
4 county and to the judge thereof in vacation, in the same  
5 manner and to the same extent as to the circuit court  
6 of Wyoming county or the judge thereof in vacation, and  
7 the same powers may be exercised within the county of  
8 Wyoming by said court and the judge thereof in vacation,  
9 as are now exercised by the circuit court of said county  
10 provided for in said chapters.

Sec. 26. *Extraordinary Remedies.*—The criminal court  
2 of Wyoming county and the judge thereof in vacation  
3 shall, concurrent with the supreme court of appeals, cir-  
4 cuit court of said county, or any judge of either of said  
5 courts in vacation, grant a writ of habeas corpus, ad sub-  
6 jiciendum, as provided in chapter fifty-three of the code  
7 of West Virginia, and all the provisions of said chapter  
8 shall be applicable thereto, and the same shall be gov-  
9 erned as herein provided.

Sec. 27. *Juries.*—Chapter fifty-two of the code of West  
2 Virginia shall apply to said criminal court as it now ap-  
3 plies to the circuit court of said county, within the scope  
4 and limit of this act.

Sec. 28. *West Virginia Reports and Acts to Be Fur-*  
2 *nished Judge.*—The West Virginia reports and bound acts

3 of the Legislature shall be delivered to the said judge of  
4 said court, in the same manner as they are required to be  
5 delivered to the circuit courts of this state.

*Sec. 29. Appointment of Judge; First Term of Court.—*

2 Within sixty days from the effective date of this act, the  
3 governor shall appoint a judge for said criminal court,  
4 who shall act until the next general election, at which  
5 time his successor shall be elected. The judge appointed  
6 shall hold the first term of court on the fourth Monday  
7 in August, one thousand nine hundred forty-nine.

*Sec. 30. Court Reporter.—*The judge of the criminal

2 court of Wyoming county is hereby authorized to employ  
3 a court reporter, and the county court shall fix and pay  
4 the salary of such court reporter.

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## CHAPTER 164

(Senate Bill No. 214—By Mr. Wylie)

AN ACT to authorize and empower the county court of Wyoming county to transfer the unexpended balances in the dog tax fund to the general county fund of said county.

[Passed March 4, 1949; in effect from passage. Approved by the Governor.]

**Section**

1. Wyoming county court authorized to transfer dog tax fund.

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

*Section 1. Wyoming County Court Authorized to*

2 *Transfer Dog Tax Fund.*—The county court of Wyoming  
3 county is hereby authorized and empowered to transfer  
4 the unexpended balances now in the dog tax fund of said  
5 county, remaining and not needed for the payment and  
6 satisfaction of all claims and expenses against the said  
7 dog tax fund, to the general county fund of said county.

8 All acts, or parts of acts, inconsistent herewith, are  
9 hereby repealed, insofar as they may apply to Wyoming  
10 county.

# RESOLUTIONS

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## HOUSE CONCURRENT RESOLUTION NO. 1

(By Mr. McCoy)

[Adopted January 12, 1949.]

Raising a joint assembly to open and publish election returns.

*Resolved by the House of Delegates, the Senate concurring therein:*

That the two Houses of the Legislature convene in joint assembly in the hall of the House of Delegates at 1:45 o'clock P. M., this day, that the Speaker of the House of Delegates may, in the present of the Senate, open and publish the returns of the election of governor and other state officers elected at the general election held throughout the state on the 2nd day of November, one thousand nine hundred forty-eight, as provided by section three, article seven of the Constitution of this State.

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## HOUSE CONCURRENT RESOLUTION NO. 2

(By Mr. Matthews)

[Adopted January 12, 1949.]

Providing for a joint assembly to hear the biennial message of the Governor.

*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 2:00 o'clock P. M., this day to hear the biennial message of His Excellency, Governor Clarence W. Meadows.

## HOUSE CONCURRENT RESOLUTION NO. 3

(By Mr. Doring)

[Adopted January 12, 1949.]

Providing for a recess of the Legislature.

*Resolved by the House of Delegates, the Senate concurring therein:*

That when adjournment is taken by the two Houses of the Legislature at the close of this day's session, such adjournment shall be until Tuesday, January 18, 1949, at 2:00 o'clock P. M.

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## HOUSE CONCURRENT RESOLUTION NO. 4

(By Mr. Doring)

[Adopted January 18, 1949.]

Providing for a recess of the Legislature.

*Resolved by the House of Delegates, the Senate concurring therein:*

That when adjournment is taken by the two Houses of the Legislature at the close of this day's session, such adjournment shall be until Monday, January 24, 1949, at 2:00 o'clock P. M.

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## HOUSE CONCURRENT RESOLUTION NO. 5

(By Mr. Blankenship)

[Adopted January 24, 1949.]

Deploring the death of Dr. Joseph Franklin Marsh.

WHEREAS, The members of the forty-ninth Legislature have been advised of the death of Dr. Joseph Franklin Marsh on Saturday, January 15, 1949; and

WHEREAS, The deceased was a prominent educational leader in West Virginia, having served as Secretary of the State Board of Education and State Director of Vocational Education from 1919 to 1929; as president of Concord College from 1929 to 1945; as president emeritus of Concord from the date of his retire-

ment in 1945 to the time of his death; as president of the State Education Association; and

WHEREAS, During his services as Secretary of the State Board of Education, he was influential in elevating the state's normal schools to the status of fully accredited four year colleges; and

WHEREAS, Under his capable leadership as president, Dr. Marsh is credited with raising the educational standards of Concord from a normal school to a full four year college with an expanded curriculum and extensive physical improvements including the construction and equipping of a gymnasium, a library, an indoor swimming pool, two dormitories, a home economics cottage, modern homes for the president and faculty members, and expansion and beautification of campus grounds; and

WHEREAS, As an author, the deceased had written three books—a geography textbook on West Virginia, "The Teacher Outside the School," and "Successful West Virginians"; and

WHEREAS, Dr. Marsh, until the time of his death, was an active leader in civic and religious affairs, having served as president of the Charleston Rotary Club, immediate past president of the 185th District of Rotary International, Boy Scout official and an ardent supporter of church activities wherever he lived; and

WHEREAS, Concord College will soon have erected upon its campus a Memorial Chapel, according to a plan initiated and directed by the deceased; and

WHEREAS, The noble life and deeds of the deceased will continue to live not only in that which is tangible but in the lives of those whom he inspired; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That the members of the forty-ninth Legislature, being advised of the death of Dr. Joseph Franklin Marsh and fully conscious of the tragic loss of a successful West Virginia educator, author and civic leader, do hereby express our sincere heartfelt sympathies to the family of the deceased; and, be it

*Further Resolved*, That a copy of this resolution be transmitted to the widow of the deceased; and, be it

*Further Resolved*, That when the Senate and the House of Delegates shall adjourn today, they do so out of respect to the memory of the deceased.

Committee Substitute For

HOUSE CONCURRENT RESOLUTION NO. 6

(Originating in the House Committee on the Judiciary)

[Adopted February 10, 1949]

Memorializing the Congress for the enactment of legislation to extend and liberalize the present Federal Social Security Law.

WHEREAS, The Federal Social Security program has proved to be of great value to the citizens of this country in both an economic and humanitarian sense; and

WHEREAS, There are now many classes of employees who are not allowed to participate in this exemplary and beneficent program under the present Federal Social Security Law; and

WHEREAS, The President of the United States has recommended to Congress that the present Federal Social Security Law be extended and liberalized; and

WHEREAS, By act of the 1947 Legislature, Senate Bill No. 351, relating to the acceptance of future federal legislation by the State of West Virginia, permitting state and local public employees to secure coverage under the old age and survivors insurance provision of the Social Security Act, was enacted into law; and

WHEREAS, It has been ascertained that an extension and liberalization of the provisions of the present Federal Social Security Law is contemplated by the Eighty-First Congress of the United States; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That we approve the movement to secure an enactment of legislation by the Congress of the United States which will extend and liberalize the benefits of the present Federal Social Security program to include states and their political subdivisions and instrumentalities, and that we earnestly request our members of the Senate and House of Representatives to use all honorable means to secure the prompt enactment of such legislation at this session, and that a copy of this resolution be forwarded to the West Virginia members of the Senate and the House of Representatives, the President of the Senate, and the Speaker of the House of Representatives.

### HOUSE CONCURRENT RESOLUTION NO. 8

(By Mr. Doring)

[Adopted January 26, 1949.]

Providing for a joint assembly to hear an address of His Excellency, the Governor.

WHEREAS, His Excellency, the Governor, has advised the President of the Senate and the Speaker of the House of Delegates that he would be pleased to address a joint assembly of the Legislature at the pleasure of the two Houses; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That His Excellency, the Governor, is hereby invited to address a joint assembly of the Legislature at 2:20 P. M., Wednesday, January 26, 1949, and that the two Houses of the Legislature meet in joint assembly at that hour.

### HOUSE CONCURRENT RESOLUTION NO. 12

(By Mr. Blankenship and Mr. Martin)

[Adopted March 7, 1949.]

Providing for the adoption of an official state bird and official state tree.

WHEREAS, No bird has been officially designated as a state bird by action of the Legislature; and

WHEREAS, Interest in birds and wildlife is so increasing in West Virginia, among school children, civic organizations, bird study groups and many other citizens, that an official state bird should be designated; and

WHEREAS, West Virginia is one of only three states without an officially designated state bird; and

WHEREAS, No tree has been officially designated as a state tree by action of the Legislature; and

WHEREAS, The designation of a state tree would aid in the promotion of interest in conservation and forestry in West Virginia; and

WHEREAS, The school children and other interested citizens should have the privilege of helping to select an official state bird and an official state tree; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That the Legislature of West Virginia hereby authorizes the designation of an official state bird and an official state tree as determined by popular choice of the school pupils enrolled in the elementary and high school grades of the public and private schools of the State, the students enrolled in West Virginia University and all other colleges operated within the State, the recognized garden clubs and civic organizations, sportsmen's associations and bird study groups of the State, said vote to be taken during the month of April, one thousand nine hundred forty-nine; and be it

*Further Resolved*, That the State Superintendent of Free Schools be hereby notified of this action, and authorized and requested to arrange for such vote in all of the counties, provide rules and regulations for same, and compile the returns as a state summary report; and be it

*Further Resolved*, That the State Superintendent of Free Schools, the respective clerks of the House and the Senate, and



the respective chairmen of the Committees on Education of both Houses, are hereby designated as a committee to review and tabulate the results of this election and by virtue of this resolution to declare the bird receiving the most votes to be the official state bird of West Virginia, and the tree receiving the most votes to be the official state tree of West Virginia.

### HOUSE CONCURRENT RESOLUTION NO. 18

(By Mr. Speaker, Mr. Flannery)

[Adopted March 4, 1949.]

Relating to adding a course in coal mining to the public school curriculum.

WHEREAS, The largest industry of the State of West Virginia is the production of bituminous coal which employs more than one hundred thousand workers and produces annually more than one hundred sixty million tons of coal, which huge production is made possible because a majority of the mines are mechanized and the employees have become by experience skilled workers; and

WHEREAS, The hazards to the employees of this industry are great, and altogether too many employees are annually killed, crippled, disabled or otherwise incapacitated; and

WHEREAS, The essentials of agriculture, home economics, sanitation, dairying and like subjects are now taught in the public schools and institutions of higher learning of this State; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That because of the hazards to employees of the coal mining industry and the large number of casualties suffered by such employees, it is the sense of the Legislature that the youth of the State, from whose ranks must come tomorrow's coal miners, should be taught the rudiments of coal mining in the public schools of this State; and that the State Board of Education be hereby requested to take such appropriate action as may be

necessary to insure that a course in coal mining be added to the public school curriculum.

## HOUSE CONCURRENT RESOLUTION NO. 22

(By Mr. Doring)

[Adopted March 10, 1949.]

Memorializing the Congress in opposition to the appropriation of federal funds to plan and initiate construction of a coal-burning steam power plant for the Tennessee Valley Authority.

WHEREAS, The Congress has had under consideration the appropriation of \$2,500,000 to provide plans and initiate construction of a coal-burning steam unit for the TVA which would eventually cost \$85,000,000; and

WHEREAS, Bituminous coal production is West Virginia's greatest basic industry, providing a livelihood for 125,000 West Virginia coal miners who are dependent on continued high production of bituminous coal; and

WHEREAS, The proposed coal-burning steam power plant for TVA would directly or indirectly displace a large tonnage of West Virginia coal; and

WHEREAS, Many industries now domiciled in the northeastern portion of the United States have been seeking locations for new plants in areas where coal and other sources of power are more abundant, are locating in the TVA area rather than in West Virginia because of the advantages provided at TVA at the expense of taxpayers in West Virginia and other states outside that area; and

WHEREAS, Many West Virginia communities, now wholly dependent for support upon the bituminous coal, are seeking new industries to provide for greater employment now as well as to utilize either for fuel or processing a greater volume of West Virginia's coal within the borders of the State; and

WHEREAS, The members of the West Virginia Legislature, particularly those from coal producing and new-industry-seek-

ing areas of West Virginia, are increasingly concerned about the displacement of West Virginia's coal miners, through competition from the TVA; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That we urge the Congress of the United States to refuse to approve the \$2,500,000 appropriation for a coal-burning steam power plant for the TVA, and that we earnestly request West Virginia's members of the Senate and the House of Representatives to use all honorable means to oppose the pending appropriation, and that a copy of this resolution be forwarded to all members of the West Virginia delegation in the Congress, and to the chairmen of the appropriate committees thereof.

#### HOUSE CONCURRENT RESOLUTION NO. 24

(By Mr. Johnston)

[Adopted March 12, 1949.]

Condemning persecution of pastors and clergymen in Hungary and Bulgaria.

WHEREAS, It has come to our attention that fifteen clergymen of the Methodist, Baptist, Congregational, and Pentacostal churches in Bulgaria have been arrested and tried by the Soviet-controlled Communist dictators of that country upon various shabby pretexts, but for the actual and evident purpose of destroying religious freedom in and completing the enslavement of the oppressed peoples of that unhappy country; and

WHEREAS, It has also come to our attention that the Catholic cardinal of Hungary, Joseph Cardinal Mindszenty, has been arrested, tried, and condemned by the Soviet-controlled Communist dictatorship of that country upon various equally shabby pretexts, also for the actual and evident purpose of destroying religious freedom in and completing the enslavement of the oppressed peoples of that unhappy land; and

WHEREAS, A bishop of the Lutheran Church, the Reverend Lajos Ordass, has for many months languished in prison in Hungary, having been arrested on base and trumped-up charges by the Communist authorities of Hungary for the

equally evident purpose of destroying religious freedom and completing the enslavement of the unhappy Hungarian people; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That we, the Legislature of the sovereign State of West Virginia, do most solemnly condemn the persecution of the pastors and clergymen of the Methodist, Baptist, Congregational, Pentacostal, Catholic and Lutheran churches in Hungary and Bulgaria.

That we furthermore do most solemnly condemn the trials of the clergymen aforesaid as being trials by kangaroo courts, shameful, and obscene mockeries of justice, and in effect nothing other than legalized lynchings.

That we furthermore do most solemnly condemn the so-called "confessions" extracted by the government in these trials as having been obtained under force and duress, and as an obvious result of the use of drugs or torture, mental or physical, upon the unhappy victims.

That we furthermore do, in the name of the people of the State of West Virginia, most solemnly condemn the persecution of Protestant, Catholic and Jew carried on at present by the Soviet-controlled dictatorships of eastern Europe as being a deliberate effort to destroy the freedom of religion in those lands, and therefore as deserving of the solemn condemnation of free men everywhere.

That we furthermore order and direct that a copy of this resolution be sent to the President of the United States of America, one to the Secretary of State of the United States of America, and one to the President of the United States Senate.

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#### HOUSE CONCURRENT RESOLUTION NO. 28

(By Mr. Schupbach and Mr. Trent)

[Adopted March 12, 1949.]

Concerning the appointment of the Honorable Louis A. Johnson as Secretary of Defense.

WHEREAS, President Truman has bestowed upon the State of West Virginia a high and signal honor in appointing the Honorable Louis A. Johnson as Defense Secretary; and

WHEREAS, Mr. Johnson is an outstanding lawyer and business man of the State, a veteran of World War I, a former National Commander of the American Legion, a former member of the West Virginia House of Delegates, having served as Chairman of the House Committee on the Judiciary and majority floor leader in the 1917 Legislature; and

WHEREAS, He became Civilian Aide to the Secretary of War for the State of West Virginia in 1933, has served as member of the Federal Advisory Council of the U. S. Employment Service under the Department of Labor, served as Assistant Secretary of War from 1937 to 1940, and was the personal representative of the late President Franklin D. Roosevelt in India in 1942; and

WHEREAS, Mr. Johnson contributed much to the defense and preparedness of this nation for World War II as well as to plans for the conduct of this war which ended in victory for the United States and her allies; and

WHEREAS, This is the fifth time a West Virginian has been appointed a member of a President's Cabinet, the others being the late Nathan Goff, who served as Secretary of Navy in the administration of President Rutherford B. Hayes, the late Stephen B. Elkins, who served as Secretary of War in the Cabinet of President Benjamin Harrison, the late William Lynn Wilson, who served as Postmaster General in the Cabinet of President Cleveland, and the late Howard M. Gore, who served as Secretary of Agriculture under President Coolidge; and

WHEREAS, Mr. Johnson by training and experience is eminently qualified to ably discharge the important duties and responsibilities of Secretary of Defense; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That the members of the West Virginia Legislature hereby express their appreciation and thanks to President Truman for thus honoring the State and one of her distinguished citizens,

and also congratulates Mr. Johnson on receiving this high and merited honor, and wishes for him a most successful, pleasant and constructive service in this highly important and powerful position; and, be it

*Further Resolved*, That copies of this resolution be transmitted to President Truman and Mr. Johnson.

### HOUSE CONCURRENT RESOLUTION NO. 33

(By Mr. Mills and Mr. Schupbach)

[Adopted March 12, 1949.]

Concerning the appointment of the Honorable John Kee to the chairmanship of the Foreign Affairs Committee of the House of Representatives:

WHEREAS, West Virginia has been honored by the appointment of the Honorable John Kee, a Member of Congress from the Fifth West Virginia Congressional District, to the Chairmanship of the important Foreign Affairs Committee of the House of Representatives as the successor of the late Sol Bloom; and

WHEREAS, Mr. Kee is now serving his ninth consecutive term as a member of the Congress and has ably and capably represented his district and country during these crucial years in the history of the nation; and

WHEREAS, Mr. Kee prior to his service in the Congress was a leading member of the bar in West Virginia, active in all civic and public affairs, a leader in his political party, and prior to his election to the Congress served as a member of the West Virginia State Senate; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That the members of the West Virginia Legislature have learned of this appointment with great pleasure, commend the nation on securing the services of this distinguished citizen of West Virginia in this highly important position, and congrat-

ulate Representative Kee on this signal honor which he has by long and faithful service won for himself and for his State.

### HOUSE CONCURRENT RESOLUTION NO. 34

(By Mr. File)

[Adopted March 12, 1949.]

Relating to printing of index to the Special Acts of Legislature.

WHEREAS, As authorized by H. C. R. No. 22 of the 1947 Legislature, the Attorney General has compiled an index to the Special Acts of the West Virginia Legislature; and

WHEREAS, The manuscript of said index has been delivered to the Clerk of the House of Delegates for printing; and

WHEREAS, The Acts of the 1949 session of the Legislature should be included in said index; therefore, be it

*Resolved by the House of Delegates the Senate concurring therein:*

That before printing of said index, the Clerk of the House of Delegates shall include therein such additions and changes as are necessary to include Acts of the 1949 Legislature; and, be it

*Further resolved,* That the Clerk of the House of Delegates is hereby authorized to pay such expenses as may be incurred in the editing, revising, printing and proof reading of said index, the same to be paid from the contingent fund of the House of Delegates, and to have said index printed as authorized by H. C. R. No. 22, 1947 Legislature. The cost of printing said index shall be paid from the Legislative printing fund.

### HOUSE JOINT RESOLUTION NO. 3

(By Mr. Ballard, of Mercer)

[Adopted February 28, 1949.]

Proposing an amendment to the Constitution of the State, amending section thirty-three of article six thereof.

*Resolved by the Legislature of West Virginia, two-thirds of all the members elected to each House agreeing thereto:*

That the question of ratification or rejection of an amendment to the Constitution of West Virginia shall be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred fifty, which proposed amendment is as follows:

That section thirty-three, article six of the Constitution be amended to read as follows:

Section 33. The members of the Legislature shall each receive for their services, the sum of one thousand dollars per annum, and ten cents for each mile travelled in going to and returning from the seat of government by the most direct route, and in addition thereto, shall receive ten dollars per day for each day's attendance upon any extended or extraordinary session of the Legislature. The Speaker of the House of Delegates and the President of the Senate shall each receive an additional compensation of five dollars per day for each day they shall act as presiding officer. No other allowance or emolument than that by this section provided shall directly or indirectly be made or paid to the members of either house for postage, stationery, newspapers, or any other purpose whatever.

#### HOUSE JOINT RESOLUTION NO. 6

(By Mr. Speaker, Mr. Flannery)

[Adopted March 12, 1949.]

Proposing an amendment to the Constitution of the State of West Virginia, to be known as the "Veterans' Bonus Amendment," relating to the issuance and sale of state bonds for the payment of a bonus for veterans.

*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 fifty, which proposed amendment is as follows:

That the Constitution of the State of West Virginia be, and the same is hereby, amended by adding thereto the following:

#### Veterans' Bonus Amendment

The Legislature shall by law provide for the issuance and sale of state bonds, not to exceed in the aggregate ninety million dollars, which shall be in addition to all other state bonds heretofore authorized. The proceeds of such additional bonds, or so many thereof as may be necessary for the purpose, shall be used and appropriated solely for the purpose of paying a cash bonus to veterans of World War I and World War II. Such bonus shall be paid to all persons who rendered active service in the armed forces of the United States in World War I between the sixth day of April, one thousand nine hundred seventeen, and the eleventh day of November, one thousand nine hundred eighteen, both dates inclusive, or in World War II between the seventh day of December, one thousand nine hundred forty-one, and the second day of September, one thousand nine hundred forty-five, both dates inclusive, or in both such wars, who were bona fide residents of the State of West Virginia at the time of their entry into such service and for a period of at least six months prior thereto, who were not dishonorably discharged from such forces, and who within the periods specified above actively served in such armed forces for a period of at least ninety days. Such a bonus shall also be paid to any disabled veteran, otherwise qualified, who was discharged within ninety days after entering the services because of a service connected disability. The amount of such bonus shall be calculated on the basis of ten dollars for each month, or major fraction thereof, served within the territorial limits of the forty-eight states and the District of Columbia, and fifteen dollars for each month, or major fraction thereof, served outside such limits, but such amount shall in no case exceed three hundred dollars for those who served only within the territorial limits specified above, and four hundred dollars for those who served outside such limits. The bonus to which

any deceased veteran would be entitled, if living, shall be paid only to the following surviving relatives of such veteran, if such relatives are residents of this State when application for payment is made: Any unremarried widow, or if none, any child or children under the age of sixteen, or if none, any dependent parent or parents.

Whenever the Legislature shall provide for the issuance of any bonds under the authority of the amendment, it shall at the same time provide for the levy and collection of an additional cigarette tax, or an additional tax on nonintoxicating beer, or an additional charge on the sale of each bottle of wine and liquor, or an additional general consumers sales tax, or a graduated income tax, or any two or more thereof, in such amount as may be required to pay annually the interest on such bonds and the principal thereof within and not exceeding thirty years.

#### HOUSE RESOLUTION NO 1

(By Mrs. Walker)

[Adopted January 12, 1949.]

Election of Clerk, Sergeant-at-Arms and Doorkeeper of the House of Delegates.

*Resolved by the House of Delegates:*

That J. R. Aliff, from the County of Fayette, be, and he is hereby, elected Clerk of the House of Delegates.

That C. Fred Combs, from the County of McDowell, be, and he is hereby, elected Sergeant-at-Arms of the House of Delegates.

That Royal C. Davis, from the County of Harrison, be, and he is hereby, elected Doorkeeper of the House of Delegates.

#### HOUSE RESOLUTION NO. 2

(By Mr. Woodyard)

[Adopted January 12, 1949.]

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 forty-seven, are hereby adopted and shall govern the proceedings of this House.

### HOUSE RESOLUTION NO. 3

(By Mr. Davis)

[Adopted January 12, 1949.]

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 W. E. Flannery, of the County of Logan, as Speaker, and J. R. Aliff, of the County of Fayette, as Clerk, and is ready to proceed with the business of the session.

### HOUSE RESOLUTION NO. 4

(By Mr. Casey)

[Adopted January 12, 1949.]

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 a similar committee on the part of the Senate, to notify His Excellency, the Governor, that a quorum of each House of the Legislature 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.

## HOUSE RESOLUTION NO. 5

(By Mr. Loop)

[Adopted January 12, 1949.]

Authorizing the publication of 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 House of Delegates, the joint rules of the Senate and House of Delegates and such matter and material as he may deem to be useful and convenient to the members of the Legislature. The Clerk of the House of Delegates shall cooperate with the Clerk of the Senate in compiling said manual and include therein such material with reference to the Senate as the said Clerk of the Senate may prepare so as to obviate the necessity of the Senate publishing a manual.

A sufficient number of copies of said manual to supply each member of the Legislature with ten copies thereof shall be printed.

## HOUSE RESOLUTION NO. 6

(By Mr. Cline)

[Adopted January 12, 1949.]

Authorizing payment of mileage to members of the House of Delegates.

*Resolved by the House of Delegates:*

That in accordance with section thirty-three, article six of the Constitution of the State, the Clerk of the House of Delegates is hereby authorized to draw his requisitions upon the Auditor for mileage of members of the House of Delegates at the rate of ten cents per mile for such number of miles as has heretofore or will be certified to him by the various members as having been traveled in coming to the seat of government and returning to their homes on account of this session of the Legislature.

## HOUSE RESOLUTION NO. 7

(By Mr. White, of Cabell)

[Adopted January 18, 1949.]

Authorizing payment for services rendered prior to the session and for supplies purchased prior to the opening of the session.

*Resolved by the House of Delegates:*

That the Clerk of the House of Delegates, with the approval of the Speaker, is hereby authorized to draw his requisitions in payment of bills for supplies purchased prior to the opening of the session and for services rendered the House of Delegates preparatory to the opening of the session, said requisitions to be drawn upon the contingent fund of the House of Delegates.

## HOUSE RESOLUTION NO. 8

(By Mr. Roach)

[Adopted January 18, 1949.]

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 ten names from each Delegate; and the expenses 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 such mail from any person or persons other than those so designated by the Clerk; and, be it

*Further Resolved*, That the Clerk is hereby authorized to mail copies of journals, bills and other documents printed by the House to persons requesting the same.

### HOUSE RESOLUTION NO. 9

(Originating in the Committee on Rules)

[Adopted January 24, 1949.]

Authorizing the appointment of attaches for the House of Delegates for the one thousand nine hundred forty-nine regular 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 attaches to receive the per diem as herein provided, during this session of the Legislature:

(1) For the Clerk's office the following:

- Two record clerks at ten dollars per day each;
- Two roll-call clerks at ten dollars per day each;
- Three proofreaders and three copyholders at eleven dollars per day each;
- One payroll and supply clerk at fifteen dollars per day;
- One bill editor at sixteen dollars per day;
- One clerk to the Committee on Enrolled Bills at eleven dollars per day;
- Two file clerks at ten dollars per day each;
- One receptionist at ten dollars per day;
- One Journal clerk at eighteen dollars per day;
- One messenger for the Clerk's office at nine dollars per day;

(2) For other offices and positions the following:

- One clerk, one assistant clerk and one stenographer to the Committee on Finance at sixteen, thirteen and twelve dollars per day each, respectively;
- One clerk, one assistant clerk and one stenographer to the Committee on the Judiciary at sixteen, thirteen and twelve dollars per day each, respectively;

One clerk to the Committee on Education at thirteen dollars per day;  
Twelve committee clerks, to be assigned by the Speaker, at eleven dollars per day each;  
One secretary to the minority and one clerk to the minority at fifteen dollars per day each;  
Fourteen stenographers and clerks from the minority, to be assigned by the Speaker, at eleven dollars per day each;  
One supervisor of stenographers at fifteen dollars per day;  
Twelve stenographers for the stenographic room at eleven dollars per day each;  
Four typists at ten dollars per day each;  
One supervisor of the document room at twelve dollars per day;  
One supervisor of the mailing room at twelve dollars per day;  
Nine document room clerks at ten dollars per day each;  
Nine mailing room clerks at ten dollars per day each;  
Three pages at eight dollars per day each;  
One messenger to the Speaker at ten dollars per day;  
Three assistants to the Sergeant-at-Arms at eleven dollars per day each;  
One clerk to the Sergeant-at-Arms at eleven dollars per day;  
Six assistant doorkeepers at nine dollars per day each;  
One mimeograph supervisor at eleven dollars per day;  
One assistant mimeograph supervisor at eleven dollars per day;  
Three mimeograph operators at ten dollars per day each;  
One supervisor of offices and property at thirteen dollars per day;  
One men's cloak room attendant at eight dollars per day;  
and, be it

*Further Resolved*, That all of the appointments made under authority of this resolution shall be certified to the Auditor and Treasurer by the Clerk of the House, 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 attaches for consecutive days from the date of their employment, at the per diem herein set out, until such time as their services shall cease. The Speaker may remove any attache and appoint another in his or her place, and he shall require each of said attaches 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 to such positions and duties as he may deem proper to secure the most efficient and expeditious work during the session of the Legislature; and, be it

*Further Resolved*, That no person appointed under authority of this resolution and receiving pay hereunder, shall concurrently receive compensation from any other department of state, or agency thereof.

#### HOUSE RESOLUTION NO. 10

(Originating in the Committee on Rules)

[Adopted January 24, 1949.]

Authorizing the payment of officers and their appointees for the House of Delegates during the one thousand nine hundred forty-nine regular session.

*Resolved by the House of Delegates:*

That, upon proper certification, the Clerk of the House of Delegates be, and he is hereby authorized, to honor for payment the following per diem of officers and appointees as herein set out for this session of the Legislature:



The Clerk of the House shall receive twenty-five dollars per day, but shall not receive the compensation provided in Account No. 102, chapter 27, Acts of the Legislature, regular session, one thousand nine hundred forty-seven; the Sergeant-at-Arms and Doorkeeper shall receive fourteen dollars per day each; and of the three assistant clerks provided for by section nine, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, one shall receive eighteen dollars per day and two shall receive fifteen dollars per day each; and, be it

*Further Resolved*, That the secretary and stenographer to the Speaker, as provided for by the rules of the House, shall receive eighteen and fifteen dollars per day, respectively; and that the secretary and stenographer to the Clerk, as provided for by the rules, shall receive eighteen and fifteen dollars per day, respectively; and, be it

*Further Resolved*, That the chaplain appointed by the Speaker under the rules shall receive seven dollars per day; and, be it

*Further Resolved*, That all 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 named 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 and appointees for consecutive days from the date of their employment, at the per diem herein set out, until such time as their services shall cease.

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#### HOUSE RESOLUTION NO. 11

(Originating in the Committee on Rules)

[Adopted January 24, 1949.]

Authorizing the appointment of janitors.

*Resolved by the House of Delegates:*

That, in conformity with the provisions of chapter thirty-

three, Acts of the Legislature, regular session, one thousand nine hundred forty-seven, the Speaker of the House of Delegates is hereby authorized to appoint eight janitors for the one thousand nine hundred forty-nine session of the Legislature at a per diem of nine dollars. Said per diem 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.

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### HOUSE RESOLUTION NO. 12

(By Mr. Doring)

[Adopted January 31, 1949.]

Authorizing payment of expenses of members of standing committees, and subcommittees thereof, incurred in visiting state institutions.

WHEREAS, Various members of standing committees and subcommittees thereof have visited state institutions as directed by the various committees, and incurred certain expenses for hotel, transportation, meals, stenographic service and other miscellaneous expenses in connection with these visits; 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 for the purpose, in favor of the members of such subcommittees, to reimburse them for money expended in the visiting and inspecting of said state institutions.

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### HOUSE RESOLUTION NO. 14

(Originating in the Committee on Rules)

[Adopted February 17, 1949.]

Authorizing the Committee on Rules to arrange a special calendar.

*Resolved by the House of Delegates:*

That beginning February 21, 1949, and for the remainder of this regular session, the Committee on Rules is authorized to arrange a special calendar effective on that date, as provided for by House Rule No. 70. After the ninth order of business shall have been passed the Special Calendar shall be called, and until this calendar is disposed of each day no item of business on the regular calendar shall be considered or take precedence over any item of business on the special calendar, except by a two-thirds vote of the members present and voting: *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 affects the interests of the people as a whole.

## HOUSE RESOLUTION NO. 15

(By Mr. Rairden)

[Adopted February 21, 1949.]

Requesting the Board of Public Works to transfer certain proposed appropriations in the Budget Bill.

*Resolved by the House of Delegates:*

That the Board of Public Works is hereby requested to transfer an amount of four million five hundred thousand dollars (\$4,500,000), as designated on page ninety-nine of the Budget Bill, under Section Five, Item Three of Capital Expenditures from Surplus Revenue, to Item Fifty-five of the same section, which amount is to be added to the amount therein designated for state aid to counties for a school building program.

## HOUSE RESOLUTION NO. 16

(By Mr. Prather)

[Adopted March 10, 1949.]

Memorializing the Congress of the United States to repeal the Taft-Hartley Law.

WHEREAS, The Labor Management Relations Act, 1947, Public Law 101, 80th Congress, Chapter 120, better known as the "Taft-Hartley Law"; and

WHEREAS, This Taft-Hartley Law brought back into force the injunction law, which had been outlawed through the efforts of the late Senator Norris, and was known as the Norris Anti-Injunction Act; and

WHEREAS, Section eight of our Bill of Rights has been violated, not once, but twice, and we quote this section 8, "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted"; and

WHEREAS, This Taft-Hartley Law compelled involuntary servitude under government authority; therefore, be it

*Resolved by the House of Delegates:*

That we recommend to the Congress of the United States the outright repeal of the infamous Taft-Hartley Law and that we respectfully recommend that the members of Congress from the State of West Virginia support the provisions of said resolution; and, be it.

*Further Resolved,* That a copy of this resolution be forwarded to the Clerk of the Senate and the Clerk of the House of Representatives of the Congress of the United States.

## HOUSE RESOLUTION NO. 17

(By Mr. Lilly)

[Adopted March 3, 1949.]

Complimenting those contributing to the signal success of 1949 Speaker's banquet.

WHEREAS, The 1949 House of Delegates, in honoring the Speaker at the traditional banquet last night, March 2, also did itself a service by measuring the bond of good fellowship inherent in its membership; and

WHEREAS, The integrity of individuals and the respect for one another was clearly defined in this first general assemblage on a social basis; and

WHEREAS, The humility and sincerity of our own presiding officer, Speaker Flannery; the genuine friendliness and common understanding with all citizenry alike, despite his high office, upon the part of our Governor, His Excellency Okey L. Patteson; the happy relationship between the two legislative bodies demonstrated by the presence and remarks of the honorable leader of the Senate, President Broughton Johnston; all forcefully emphasizing the high calibre of statesmanship of this administration, so clearly united in a common goal of welfare for all the people of West Virginia; and

WHEREAS, The latent talent of its own membership, demonstrated by Delegates Doring, Byrd, Roach, Ellis, Cline, Richards, Manchin, Phillips, and Doorkeeper Royal C. Davis, not only provided excellent entertainment, but also promoted better understanding; and

WHEREAS, The success of this venture was in no small measure the result of the earnest endeavors of the Speaker's Banquet Committee, headed by the "flower of Fayette", Delegate Nell W. Walker; therefore, be it

*Resolved by the House of Delegates:*

That a vote of thanks be spread upon the House of Delegates' records from the membership as a whole to the Speaker's Banquet Committee, consisting of Mrs. Walker, as chairman; Delegate Frank Knight, master of ceremonies and in charge of banquet arrangements; Delegate Fred L. Doring, in charge of floor entertainment; Delegate J. C. Powell, the genial and respected minority member; Delegate Herbert Schupbach, in charge of preliminary hospitality; and Mrs. Frances Evans, the Speaker's Secretary.

## HOUSE RESOLUTION NO. 18

(By Mr. Knight)

[Adopted March 3, 1949.]

Establishing the Third House.

WHEREAS, It has been the custom of the House of Delegates for many years past to conduct near the close of the session a Third House; and

WHEREAS, Such a Third House is usually placed in the capable hands of the press and radio; and

WHEREAS, It's getting awful late; and

WHEREAS, We should do something about this, and soon; therefore, be it

*Resolved by the House of Delegates:*

That the hour of eight p. m. of Tuesday next, March 8, 1949, is set as the time for the Third House to meet, and that furthermore Charles R. (Snake-pit) Armentrout, of the Charleston Gazette, be established as the Speaker of same, and that furthermore the announcement of same be spread far and wide throughout our grand and glorious State so that many may come and be insulted.

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## HOUSE RESOLUTION NO. 19

(By Mr. Dawson and Mr. Underwood)

[Adopted March 7, 1949.]

Requesting the Board of Public Works to submit a supplemental budget appropriating money requested by the Department of Public Assistance.

WHEREAS, The Department of Public Assistance requested \$13,126,973 for the fiscal year 1949-1950 and \$13,502,730 for the fiscal year 1950-1951, from the Board of Public Works, and the Board of Public Works approved to the Department of Public Assistance \$9,136,057 for the fiscal year 1949-1950, and \$9,146,102 for the fiscal year 1950-1951, and the sums appropriated to the

Department of Public Assistance by the Board of Public Works are insufficient to adequately provide for those citizens who through recurring misfortunes of life have been compelled to receive assistance from the State, and the State of West Virginia owes a legal and moral duty to provide reasonable and proper assistance to the aged and infirm, the blind, the underprivileged, and the poverty-stricken; therefore, be it

*Resolved by the House of Delegates:*

That the Board of Public Works is hereby requested to submit a supplemental budget, appropriating to the Department of Public Assistance the sum of \$13,126,973 for the fiscal year 1949-1950, and the sum of \$13,502,730 for the fiscal year 1950-1951.

#### HOUSE RESOLUTION NO. 20

(By Mr. Rairden)

[Adopted March 7, 1949.]

Extending sympathy to the Honorable Rush D. Holt, Delegate from the county of Lewis, and Mrs. Holt, during the critical illness of their daughter, Helen Jane.

WHEREAS, It is with sincere and heartfelt sorrow that the members of the House of Delegates have learned of the serious illness of the daughter of the Delegate from the County of Lewis; and

WHEREAS, It is the prayer of this House that it may be God's will that she recover; therefore, be it

*Resolved by the House of Delegates:*

That the members of this body, fully aware of the esteem in which the gentleman from Lewis is held by his multitude of friends throughout the State, do hereby offer their prayers and heartfelt sympathy to Delegate and Mrs. Holt; and be it

*Further Resolved*, That a copy of this resolution be forwarded to Delegate and Mrs. Holt at Johns Hopkins Hospital, Baltimore, Maryland, where they are at the bedside of their daughter.

## HOUSE RESOLUTION NO. 21

(Originating in the Committee on Rules)

[Adopted March 12, 1949.]

Authorizing the printing and distribution of the Acts of this session of the Legislature, providing for the printing of corrected Journals, and for the completion of the other work of this session.

*Resolved by the House of Delegates:*

That under authority of section thirteen, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, the Clerk of the House of Delegates is hereby directed to have printed by the public printer in paper binding 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.

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 copies of said acts 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 available. The Clerk of the House of Delegates shall also furnish one copy of 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 Clerk of the House is also authorized and directed to have printed in signature form for advance sheets, any gen-



eral law which he may deem to be of sufficient importance to be issued and distributed in this form.

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; and for the purpose of completing the other work of this session in arranging and filing of all bills, resolutions and other official papers in the Clerk's office; and for the indexing and proofreading of the corrected House Journals, and to include therein a simple index of all bills introduced in the 1949 session of the Legislature, and printing thereof, the per diem of the Clerk, two assistant clerks, and the secretary to the clerk is extended for one hundred fifty days, and the time of one assistant clerk is extended for one hundred twenty days, all at the same per diem as paid during this regular session of the Legislature.

For the above cited purposes, the Speaker of the House of Delegates is hereby authorized to name the following employees for the number of days herein set forth at the per diems paid for such work during this regular session of the Legislature:

A journal clerk for one hundred fifty days; a proofreader for sixty days; a stenographer on journal work for ten days; a supervisor of document room for seven days; a supervisor of mailing room for seven days; a secretary to the minority for seven days; a clerk to the minority for seven days; a supervisor of mimeograph room and an assistant mimeograph supervisor for seven days each; a document room clerk for seven days; a payroll and supply clerk for seven days; a supervisor of stenographers for seven days; a clerk to the Committee on the Judiciary, a clerk to the Committee on Finance, a clerk to the Committee on Education, and a clerk to the Committee on Enrolled Bills, each for seven days; one supervisor of offices and property for ten days; eight janitors for five days each, and one cloakroom attendant for eight days; and, be it

*Further Resolved*, That for the purpose of certification, correspondence, filing and other duties incident to the Speaker's office, the time of the Secretary and the Stenographer to the

Speaker is extended for thirty days each at the same per diem paid during this regular session of the Legislature; and, be it

*Further Resolved*, That for the purpose of arranging the offices and committee rooms and performing the other duties of their offices, the time of the Sergeant-at-Arms and Door-keeper is extended for seven days each, at the same per diem paid during this regular session of the Legislature.

The Clerk shall draw his requisitions upon the Auditor in favor of the person receiving 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 persons appointed under authority of this resolution, except elective officers of the House of Delegates, and to appoint another in his place to fill any vacancy that may occur.

The Clerk is authorized to have printed not more than six hundred copies of the corrected House Journals. Of this number, one copy each shall be mailed to each member of the Legislature, and after retaining a sufficient number of copies to supply the offices in the House of Delegates, the remainder shall be turned over to the supervisor of public printing.

To pay postage or expressage on acts and journals, and other matter to be mailed by the House of Delegates, the Clerk is hereby authorized to draw his requisitions upon the Auditor, payable from the contingent fund of the House of Delegates, for such purposes.

### HOUSE RESOLUTION NO. 23

(By Mrs. Walker)

[Adopted March 12, 1949.]

Requesting membership to confer records used to expedite work.

WHEREAS, The Pierce and Audograph recorders used in the

House chamber at the opening session of this Legislature and in the Speaker's office during the sixty days now ending were not only an innovation in the proceedings of this body, but served greatly to expedite the work; and

WHEREAS, The bulk of the test of speeding up matters by such mechanical usage was made by the private stenographic force serving the Speaker; therefore, be it

*Resolved by the House of Delegates:*

That the House of Delegates purchase the Pierce and Audio-graph recorders, and present them to the Speaker, the Hon. W. E. Flannery, for permanent use in his private law office and for interim legislative work during the next biennium.

#### HOUSE RESOLUTION NO. 24

(By Mr. Roach)

[Adopted March 12, 1949.]

Expressing sympathy to Delegate Young on the death of his brother.

WHEREAS, The members of this body have learned of the death of a brother of the Delegate from the County of Brooke; therefore, be it

*Resolved by the House of Delegates:*

That the heartfelt sympathy of the members of the House of Delegates is hereby extended to Delegate Young.

#### HOUSE RESOLUTION NO. 25

(By Mr. File)

[Adopted March 12, 1949.]

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.

#### HOUSE RESOLUTION NO. 26

(By Mr. Trent)

[Adopted March 12, 1949.]

Raising a Committee to notify His Excellency, the Governor, that the Legislature is ready to adjourn sine die.

*Resolved by the House of Delegates:*

That a committee of three be appointed by the Speaker to join with a similar committee of the Senate 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.

#### SENATE CONCURRENT RESOLUTION NO. 1

(By Mr. Bowling)

[Adopted January 12, 1949.]

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 forty-seven are hereby adopted and shall govern the proceedings of this session.

#### SENATE CONCURRENT RESOLUTION NO. 2

(By Mr. Amos)

[Adopted January 18, 1949.]

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 requisition 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 may become due.

### SENATE CONCURRENT RESOLUTION NO. 3

(By Mr. Bean)

[Adopted January 25, 1949.]

Deploing the death of Honorable Milton Stanley Hodges.

WHEREAS, On November 4, 1948, death removed from among us, to our profound sorrow and great loss, an able and devoted public servant in the person of the Honorable Milton Stanley Hodges, of Franklin, Pendleton County; and

WHEREAS, The deceased had served as Parliamentarian of the State Senate since 1933, and was recognized as a leading authority on parliamentary procedure, proving to be a most able officer, efficient, conscientious, tactful and courteous, and winning the admiration of all members of the Legislature, regardless of party affiliation; and

WHEREAS, He had become one of the State's most familiar and beloved political figures because of his long and distinguished record as Clerk of the House of Delegates in the 1921, 1925 and 1927 sessions, and as Clerk of the Senate in the 1929, 1930 and 1931 sessions, during which he edited with distinction the West Virginia Blue Book; and

WHEREAS, His public life included four years as mayor of the municipality of Franklin and twenty years as city attorney, as well as draft board chairman during the first World War; and

WHEREAS, This distinguished gentleman was not only a faithful public servant but a patriotic American soldier, having served as a member of the Fourth Ohio Volunteer Infantry during the Spanish-American War; and

WHEREAS, As a lawyer the deceased was widely known and highly respected in the legal profession, and esteemed for his knowledge and ability by all governmental officials with whom he had dealings; and

WHEREAS, He was a thoughtful and generous neighbor, a devoted citizen, a true fraternalist, an active Mason, a man of quiet personal charm and unfailing loyalty to his friends, and a Republican admired and respected by members of all political groups; therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That the members of the forty-ninth Legislature of West Virginia, acutely aware of the tragic and profound loss suffered by the State in the passing of this distinguished West Virginian, do hereby extend their deep and heartfelt sympathy to the family and relatives of the deceased; and, be it

*Further Resolved*, That a copy of this resolution be transmitted to the daughter of the deceased; and, be it

*Further Resolved*, That when the Senate and House of Delegates adjourn today, they do so out of respect to the memory of this former Clerk of the Senate and the House of Delegates.

#### SENATE CONCURRENT RESOLUTION NO. 4

(By Mr. Amos)

[Adopted February 8, 1949.]

Raising a joint Legislative committee for the purpose of acquiring for the State of West Virginia Newton D. Baker Hospital, at Martinsburg, West Virginia.

WHEREAS, The United States government, during World War II, constructed at or near Martinsburg, West Virginia, a 3,500

bed convalescent hospital, known as Newton D. Baker Hospital; and

WHEREAS, At the conclusion of World War II the operation of this institution was virtually suspended and the property contemplated as surplus for disposal by the War Assets Administration; and

WHEREAS, The United States government has established the precedent, in several instances, of ceding such properties to the state or other subdivisions of state government in which the same are located, for a nominal consideration of one dollar; therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That a joint committee of the two houses, consisting of the President of the Senate and four other members of the Senate to be chosen by him, and the Speaker of the House and four other members of the House to be chosen by him, be raised for the purpose of conferring with the proper officials of the United States government in an effort to obtain for the State of West Virginia, for the aforesaid consideration, the Newton D. Baker Hospital property at Martinsburg, for such use as the Legislature shall determine; and, be it

*Further Resolved*, That the Governor of West Virginia be invited to serve as a member and ex officio chairman of said joint legislative committee; and, be it

*Further Resolved*, That said committee be authorized and instructed to seek the counsel and assistance of the West Virginia members of the United States Senate and of the House of Representatives; the National Committeemen of the Democratic and Republican parties; and of all other persons who may be of effective aid, in bringing about the acquisition of this property by the State; and, be it

*Further Resolved*, That the committee is authorized to fix the amount to be paid the members thereof as an allowance for their expenses, not to exceed fifteen dollars per day per member, and for their mileage; and, be it

*Further Resolved*, That such committee shall make a report to the Legislature before the conclusion of the one thousand nine hundred forty-nine regular session thereof; but, if necessary in order to successfully complete the duties assigned to it, such committee shall be continued and shall continue its efforts beyond the current session, as an interim committee of the forty-ninth Legislature.

The Clerk of the Senate and the Clerk of the House of Delegates, upon the approval of the chairman of said committee, shall draw their requisitions upon the Auditor, payable equally out of the contingent fund of the House of Delegates and the contingent fund of the Senate for such expenditures and expenses of said committee as are authorized by this resolution. Requisitions to the Auditor for payment of expenses of said committee shall be accompanied by the signed approval of said expenses, signed by the chairman of said committee or by one authorized to do so by the committee.

#### SENATE CONCURRENT RESOLUTION NO. 6

(By Mr. Beeler and Mr. Bean)

[Adopted February 21, 1949.]

Requesting the Board of Public Works to submit an amendment and supplement to the Budget Bill, making an appropriation to the West Virginia Foundation for Crippled Children to be used for the hospital at Berkeley Springs, known as the "Pines."

WHEREAS, The 1945 Legislature appropriated the sum of \$5,000.00 to the West Virginia Foundation for Crippled Children for certain improvements at the hospital at Berkeley Springs, known as the "Pines"; and

WHEREAS, The sum of \$1,838.73 of said appropriation was expended for necessary work on the hospital, and on June seventeen, one thousand nine hundred forty-seven, the Board of Control entered into a contract with C. B. Michael for certain other repairs and improvements at this institution in an amount equal to the remainder of the original appropriation; and



WHEREAS, The contractor started this work and found he could not obtain necessary materials, resulting in the contracted work not being completed; and

WHEREAS, The said appropriation expired and was returned to general revenue before the work was completed or the contractor paid for the work he had already done; therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That the Board of Public Works be, and is hereby respectfully requested to submit to the Legislature an amendment and supplement to the 1949 Budget Bill in the amount of \$3,161.27, said amount to be used for paying for such work as was done under the former contract, and for the completion of the repairs and improvements for which the appropriation was made in 1945.

## SENATE CONCURRENT RESOLUTION NO. 9

(Originating in the Committee on Finance)

[Adopted March 2, 1949.]

Creating an interim committee of the Legislature to make a study and survey concerning the advisability of the establishment of a four-year school of medicine and dentistry of West Virginia University, the proper location of such a school, and the cost and adequate financing thereof.

WHEREAS, It is generally recognized that a more adequate program for the training of doctors, dentists and nurses is necessary in order to provide essential public and private health services for the people of West Virginia; and

WHEREAS, It is agreed that West Virginia University is the state educational institution best equipped and qualified to administer such a program; and

WHEREAS, There are now before the Legislature proposals for the establishment in Charleston of a four-year school of medicine and dentistry of West Virginia University and of a state hospital in conjunction therewith; and

WHEREAS, In connection with such proposals serious questions have been raised concerning the most desirable location of the school and hospital and concerning the ability of the State at the present time to make adequate financial provision for their establishment and maintenance without impairing other essential services now rendered by it in the fields of education, public health and general welfare; therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That an interim committee be created to make a study and survey concerning the advisability of the establishment of a four-year school of medicine and dentistry of West Virginia University and the proper location of such a school when established, taking into consideration the general public health program of the State, and the furnishing of the best possible training for doctors, dentists and nurses.

That prior to the convening of the next regular session of the Legislature, the committee make and issue a report to the Governor and to the Legislature concerning its study, together with such recommendations and proposed legislation as may in its opinion best serve the best interests of all the people of the State.

That the membership of the committee be composed of the President of the Senate, as co-chairman, and four members of the Senate, to be appointed by him; and the Speaker of the House of Delegates, as co-chairman, and four members of the House of Delegates, to be appointed by him.

That in connection with such study, the Governor be authorized to appoint an advisory committee of not more than ten representative citizens of the State, including as ex officio members the president of the University, the president of the West Virginia State Medical Association, the president of the West Virginia State Dental Society and the president of the West Virginia State Nurses Association, to consult and advise with the interim committee concerning the best solution of the problem.

That the committee be authorized to meet in Charleston, or elsewhere, as it may determine.

That in order to make possible the procurement of the necessary information to carry out the intent and spirit of this resolution, the committee be 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.

That the committee be empowered to employ such advisory, clerical and stenographic assistants as may be necessary in the proper execution of its duties.

That the committee be authorized to fix the amount to be paid the members of the interim and advisory committees as an allowance for their expenses, not to exceed fifteen dollars a day per member, and for their mileage, and to fix the amount to be paid to such assistants as it may employ for their compensation and expenses.

That the expenses incurred be paid from the contingent funds of the Senate and the House of Delegates in as nearly equal proportions as may be practicable.

## SENATE CONCURRENT RESOLUTION NO. 12

(By Mr. Eddy)

[Adopted March 9, 1949.]

Granting permission to introduce 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 granted to introduce a bill with the following title:

"A Bill to amend and reenact sections twelve and thirty-six, article four, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the

collection and enforcement of property taxes, including the redemption of forfeited and delinquent lands, and the sale of forfeited, delinquent, escheated, and waste and unappropriated lands for the benefit of the school fund."

### SENATE CONCURRENT RESOLUTION NO. 13

(By Mr. Love)

[Adopted March 11, 1949.]

Granting permission to introduce 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 granted to introduce a bill with the following title:

"A Bill finding and declaring certain claims against the state and its agencies to be moral obligations of the State, and directing the auditor to issue warrants for the payment thereof."

### SENATE CONCURRENT RESOLUTION NO. 14

(By Mr. Love)

[Adopted March 11, 1949.]

Granting permission to introduce 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 granted to introduce a bill with the following title:

"A Bill providing for the submission to the voters of the state of an amendment to section eight of article ten of the Constitution of the State."

## SENATE CONCURRENT RESOLUTION NO. 15

(By Mr. Bean)

[Adopted March 12, 1949.]

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 requisitions 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. 10 and House Resolution No. 21, 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.

## SENATE CONCURRENT RESOLUTION NO. 16

(By Mr. Bean)

[Adopted March 12, 1949.]

Commending members of the press who have reported the proceedings of this session of the Legislature.

WHEREAS, The West Virginia Legislature, in regular session, has enacted numerous laws of great moment and importance to the citizens of this State; and

WHEREAS, It is necessary that the citizenry receive accurate and comprehensive information of the acts of the Legislature; and

WHEREAS, The members of the press galleries of both houses have been in constant attendance at all sessions, preparing information on the acts of the Legislature for the benefit of the people of West Virginia; therefore, be it

*Resolved by the 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.

Committee Substitute For

SENATE JOINT RESOLUTION NO. 1

(Originating in the Senate Committee on the Judiciary)

[Adopted March 12, 1949.]

Providing for the submission to the voters of the State of an amendment to section eight of article ten of the Constitution of the State.

*Resolved by the Legislature of West Virginia, two-thirds of all the members elected to each House agreeing thereto:*

That the question of ratification or rejection of an amendment to the Constitution of West Virginia, shall be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred fifty, which proposed amendment is as follows:

That section eight, article ten of the Constitution of West Virginia be amended so as to read as follows:

Section 8. No county, city, school district, or municipal corporation, except in cases where such corporations have already authorized their bonds to be issued, shall hereafter be allowed to become indebted, in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, ex-

ceeding five per centum on the value of the taxable property therein to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness; nor without, at the same time, providing for the collection of a direct annual tax on all taxable property therein, in the ratio, as between the several classes or types of such taxable property, specified in section one of this article, separate and apart from and in addition to all other taxes for all other purposes, sufficient to pay, annually, the interest on such debt, and the principal thereof, within, and not exceeding thirty-four years. Such tax, in an amount sufficient to pay the interest and principal on bonds issued by any school district not exceeding in the aggregate three per centum of such assessed value, may be levied outside the limits fixed by section one of this article: *Provided*, That no debt shall be contracted under this section, unless all questions connected with the same, shall have been first submitted to a vote of the people, and have received three-fifths of all the votes cast for and against the same.

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#### SENATE RESOLUTION NO. 1

(By Mr. Hardesty)

[Adopted January 12, 1949.]

Adopting rules of the Senate.

*Resolved by the Senate:*

That the rules of the Senate, regular session, one thousand nine hundred forty-seven, be adopted as the rules of the Senate for this session.

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#### SENATE RESOLUTION NO. 2

(By Mr. McKown)

[Adopted January 12, 1949.]

Raising a committee to notify the House of Delegates that the Senate is organized.

*Resolved by the Senate:*

That the President of the Senate is hereby authorized to

appoint a committee of three to inform the House of Delegates that the Senate is organized by the election of Honorable W. Broughton Johnston as President, and Mr. J. Howard Myers as Clerk, and is ready to proceed with the business of the session.

### SENATE RESOLUTION NO. 3

(By Mr. Eddy)

[Adopted January 12, 1949.]

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 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 to receive any communication or message he may desire to present.

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### SENATE RESOLUTION NO. 4

(By Mr. Stemple)

[Adopted January 12, 1949.]

Relating to the mailing of Journals and Bills.

*Resolved by the Senate:*

That the Clerk of the Senate is hereby 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, the expense of such mailing, including postage, to be paid out of the contingent fund of the Senate by the Auditor,



in advance of the appropriation therefor, under requisition drawn by the Clerk of the Senate.

SENATE RESOLUTION NO. 5

(By Mr. Johnston, Mr. President)

[Adopted January 24, 1949.]

Authorizing the appointment of attaches and othes employees for the Senate for the one thousand nine hundred forty-nine regular session of the Legislature.

*Resolved by the Senate:*

That the Clerk of the Senate be and he is hereby authorized to appoint attaches and other employees to receive the per diem, as herein provided during this session of the Legislature, viz:

One journal clerk, at eighteen dollars per diem;

One supervisor of stenographers, at eighteen dollars per diem;

One bill editor, at eighteen dollars per diem;

One clerk to the minority, at eighteen dollars per diem;

One supervisor of printing, at eighteen dollars per diem;

One secretary to the Clerk, at eighteen dollars per diem;

One secretary to the President, at eighteen dollars per diem;

One chaplain, at seven dollars per diem;

One journal room supervisor, at twelve dollars per diem;

One assistant journal room supervisor, at eleven dollars per diem;

Two assistants to the Sergeant-at-Arms, at eleven dollars per diem;

One clerk on enrolled bills, at eleven dollars per diem;

One payroll clerk at fifteen dollars per diem;

One receptionist to the President, at ten dollars per diem;

One clerk to the Judiciary Committee, at sixteen dollars per diem;

One assistant clerk to the Judiciary Committee, at thirteen dollars per diem;

One stenographer to the Judiciary Committee, at twelve dollars per diem;

One clerk to Finance Committee, at sixteen dollars per diem;  
One assistant clerk to Finance Committee, at thirteen dollars per diem;

One stenographer to Finance Committee, at twelve dollars per diem;

Three committee clerks at large, at eleven dollars per diem;

Ten journal and mailing room clerks, at ten dollars per diem;

Ten document room clerks, at ten dollars per diem;

Eight assistant doorkeepers, at ten dollars per diem;

Eight typists at ten dollars per diem;

Eight floor stenographers, at eleven dollars per diem;

Four committee clerk-stenographers, at twelve dollars per diem;

Three clerk-stenographers, at eleven dollars per diem;

Four proofreaders, at eleven dollars per diem;

One supervisor of mimeograph, at eleven dollars per diem;

Four mimeograph operators, at ten dollars per diem;

One messenger to the President, at nine dollars per diem;

One messenger to the Clerk's office, at ten dollars per diem;

Eight janitors, at nine dollars per diem;

Two pages, at nine dollars per diem.

*Further Resolved*, That the Clerk of the Senate is authorized to appoint a court reporter, at twenty dollars per diem; and, be it

*Further Resolved*, That the Sergeant-at-Arms shall receive fourteen dollars per diem; the doorkeeper fourteen dollars per diem, and the Clerk twenty-five dollars per diem.

The Clerk shall draw his requisitions 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 requisitions 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 Clerk shall assign duties to the said employees and require them 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. 6

(By Mr. Mitchell)

[Adopted February 2, 1949.]

Authorized payment of expenses of members of standing committees, and subcommittees thereof, incurred in visiting state institutions.

WHEREAS, Various members of standing committees and subcommittees thereof have visited state institutions as directed by the various committees, and incurred certain expenses for hotel, transportation, meals and stenographic service and other miscellaneous expenses in connection with these visits; therefore, be it

*Resolved by the Senate:*

That the Clerk of the Senate is hereby authorized to draw his requisition upon the Auditor, payable from the contingent fund of the Senate, in advance of the appropriation for the purpose, in favor of the members of such subcommittee, to reimburse them for money expended in the visiting and inspecting of said state institutions.

## SENATE RESOLUTION NO. 8

(By Mr. Bean)

[Adopted February 16, 1949.]

Authorizing the Committee on Rules to arrange a special calendar.

*Resolved by the Senate:*

Beginning, February 21, 1949, and for the remainder of the session, the Committee on Rules is authorized to arrange a Special Calendar and, until the business on the special calendar is disposed of each day no item of business on the regular calendar shall be considered or take precedence over any item of business on the special calendar, except by a vote of two-thirds of the members present and voting.

## SENATE RESOLUTION NO. 10

(By Mr. Johnston, Mr. President)

[Adopted March 10, 1949.]

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-five dollars is hereby extended for one hundred and eighty days.

The clerk of the Senate is hereby authorized to employ the following assistants for the number of days and at the per diems hereinafter set forth:

One clerk to Finance Committee for seven days, at sixteen dollars per diem;

One clerk to Judiciary Committee for seven days, at sixteen dollars per diem;

One stenographer to Finance Committee for five days, at thirteen dollars per diem;

One stenographer to Judiciary for five days, at thirteen dollars per diem;

One stenographer to Judiciary for five days, at twelve dollars per diem;

One clerk on Enrolled Bills for ten days, at eleven dollars per diem;

One journal room supervisor for fifteen days, at twelve dollars per diem;

One journal room clerk for thirty days, at ten dollars per diem;

One stenographer for sixty days, at eleven dollars per diem;

Two journal stenographers for thirty days, at eleven dollars per diem;

One secretary to the clerk for one hundred and eighty days at eighteen dollars per diem;

One journal clerk for one hundred and eighty days at eighteen dollars per diem;

One journal editor for one hundred and eighty days at eighteen dollars per diem;

One supervisor of journals and bills for one hundred and eighty days, at eighteen dollars per diem;

One stenographer for fifteen days at eleven dollars per diem;

One printing clerk for one hundred and eighty days at eighteen dollars per diem;

Two proofreaders for one hundred and fifty days at eleven dollars per diem;

Two copyholders for ninety days at ten dollars per diem;

One clerk to minority for ninety days at eighteen dollars per diem;

One supervisor of supplies for thirty days at fourteen dollars per diem;

One secretary to the President for thirty days at eighteen dollars per diem;

One supervisor of janitors for sixty days, at ten dollars per diem;

Three assistant janitors for thirty days at nine dollars per diem, each.

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### SENATE RESOLUTION NO. 11

(By Mr. Sinsel)

[Adopted March 10, 1949.]

Concerning the absence of the Honorable E. Bartow Jones.

*Resolved by the Senate:*

That the Senate, having been informed of the inability of the Honorable E. Bartow Jones, a member of this body from the Fourth Senatorial District, to attend to the duties of his office due to an injury sustained by him, extends to him its

deepest regret and sincerest sympathy and hopes that his recovery may be speedy and complete; and, be it

*Further Resolved*, That the Clerk of the Senate is directed to forward a copy of this resolution to the Senator from Mason.

### SENATE RESOLUTION NO. 12

(By Mr. Bean)

[Adopted March 12, 1949.]

Raising a committee to notify the House of Delegates that the Senate is ready to adjourn sine die.

*Resolved by the Senate:*

That the President be authorized to appoint a committee of three to notify the House of Delegates that the Senate has completed its labors and is ready to adjourn sine die.

### SENATE RESOLUTIONS NO. 13

(By Mr. Bean)

[Adopted March 12, 1949.]

Raising a committee to notify the Governor that the Senate is ready to adjourn sine die.

*Resolved by the Senate:*

That the President is authorized to appoint a committee of three to meet with a like committee on the part of the House of Delegates to inform the Governor that the Legislature has completed its labors and is ready to adjourn sine die, and to inquire if he has any further communications he desires to make.

## DISPOSITION OF BILLS ENACTED

The following table shows the disposition of House and Senate Bills passed at the regular session of the 1949 Legislature. The first column gives the number of the bill and the second column the chapter assigned to it. House Bills appear first, followed by Senate Bills.

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