
Regular Session, 1963

The Regular Session of 1963 convened on January 9 and adjourned sine die on March 11, 1963. During the session, a total of 930 bills were introduced—578 House Bills and 352 Senate Bills. The Legislature passed 122 House Bills and 97 Senate Bills.

All bills passed, requiring action by the Executive, were approved by the Governor. The Budget Bill does not require executive action.

There were 59 House Concurrent, 11 House Joint and 36 House Resolutions offered during the session, of which 14 House Concurrent, one House Joint (HJR 10) and 32 House Resolutions were adopted. The Senate had 50 Senate Concurrent, five Senate Joint and 16 Senate Resolutions, of which 27 Senate Concurrent, one Senate Joint (SJR 1) and 14 Senate Resolutions were adopted.

HJR 10 proposes an amendment to the State Constitution authorizing the issuance of $200,000,000 in road bonds, and SJR 1 ratifies an amendment to the Constitution of the United States relating to qualifications of electors.

There were 95 House Bills, passed by the House, which failed of passage by the Senate; and 18 Senate Bills, passed by that body and failing of passage by the House. Five bills passed by the two Houses in different form failed of final action because of being in Conference or the adjournment of the session without action on Conference reports. These bills were as follows: HB 51, licensing of podiatrists; HB 237, claims against the State; HB 531, salaries of county officers; SB 58, adoption; and SB 280, penalty for attempted suicide.

First Extraordinary Session, 1963

The Governor's proclamation for this session limited the business to be considered to one item, viz: Considering and acting
upon an appropriation to the Department of Welfare to con­
tinue the Aid to Dependent Children and Work and Training
Programs for the fiscal year 1962-63.

They met on May 6 and adjourned sine die May 7, 1963, after
passing one bill making an appropriation for the purpose set
forth in the proclamation of the Governor. Only one bill was
introduced in each House. The bills were identical and SB 1
was passed.

During the session, there were three House Concurrent Reso­
lutions and eight House Resolutions offered, of which one
House Concurrent and seven House Resolutions were adopted.
The Senate had three Senate Concurrent Resolutions and five
Senate Resolutions, of which two Senate Concurrent and all
Senate Resolutions were adopted.

Regular Session, 1964

The regular 30-day session of 1964 convened on January 8
and adjourned sine die on February 7, 1964. During the 1964
Regular Session of the Legislature, 101 bills were introduced
in the Senate and House of Delegates—63 House Bills and 38
Senate Bills. The Legislature passed 32 House Bills and seven
Senate Bills.

The Governor approved all bills passed, except the Budget
Bill, which does not require executive action.

There were 50 House Concurrent and 32 House Resolutions
offered during the 30-day session, of which 29 House Concur­
rent and 29 House Resolutions were adopted. The Senate had
20 Senate Concurrent, one Senate Joint and 10 Senate Resolu­
tions, of which ten Senate Concurrent and all Senate Resolu­
tions were adopted.

There were two House Bills, passed by the House, which
were not passed by the Senate; and two Senate Bills, passed by
that body, failed of passage by the House.

First Extraordinary Session, 1964

The principal items of business embraced in the Governor's
proclamation convening this extraordinary session were the
apportionment of the members of the two Houses of the Legislature, and the election and powers of political party executive committees.

The Legislature met on February 7 and adjourned sine die on February 15, 1964, after passing two bills dealing with the foregoing subjects.

During the session, six bills were introduced—four House Bills and two Senate Bills. There was one House Joint and ten House Resolutions offered, of which all House Resolutions were adopted. The Senate had one Senate Concurrent, one Senate Joint and four Senate Resolutions, of which the Senate Concurrent and all Senate Resolutions were adopted.

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C. A. Blankenship, Clerk
House of Delegates

June 1, 1964.
ERRATA

Page 108, Chapter 22, Section 3, Line 20, the word “nine” should be “eight.”

Page 112, Chapter 22, Section 12, Line 2, omit the word “other.”

Page 164, Chapter 47, Section 13, Line 38, the word “elected” should be “effected.”

Page 1352, Chapter 12, substitute for “Article 8. Crimes against Chastity, Morality and Decency,” the following: “Article 10. Crimes against Public Policy.”
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### SENATE OFFICERS

**President**—Howard W. Carson, Fayetteville  
**President Pro Tempore**—Ward Wylie, Mullens  
**Clerk**—J. Howard Myers, Martinsburg  
**Sergeant-at-Arms**—John E. Howell, Charleston  
**Doorkeeper**—Guy Douglas, Lookout

### SENATE MEMBERS

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(D) Democrats: 23  
(R) Republicans: 9  
Total: 32

---

*Senators elected in 1960, all others elected in 1962.*
### HOUSE OF DELEGATES

**OFFICERS**

**Speaker**—Julius W. Singleton, Jr., Morgantown  
**Clerk**—C. A. Blankenship, Pineville  
**Sergeant-at-Arms**—Don Yoak, Spencer  
**Doorkeeper**—D. Earl Brawley, Charleston

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*1Appointed January 7, 1964, to fill vacancy caused by the death of Tom T. Baker.*  
*2Appointed January 4, 1963, to fill vacancy caused by the death of Wade H. Garrett, a Delegate-elect.*  
*3Appointed February 15, 1964, to fill vacancy caused by the resignation of Thomas W. Mathis.*

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<td>D. P. Given (D)</td>
<td>Webster Springs</td>
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<td>Herbert Schubach (D)</td>
<td>New Martinsville</td>
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<td>Wirt</td>
<td>Daniel Roy Mace (D)</td>
<td>Elizabeth</td>
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<td>Wood</td>
<td>Calvin A. Calendine (R)</td>
<td>Parkersburg</td>
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<td></td>
<td>Spencer K. Creel (R)</td>
<td>Parkersburg</td>
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<td>James W. Simonton (R)</td>
<td>Parkersburg</td>
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<tr>
<td>Wyoming</td>
<td>Mrs. Mae S. Belcher (D)</td>
<td>Pineville</td>
</tr>
<tr>
<td></td>
<td>J. Paul England (D)</td>
<td>Pineville</td>
</tr>
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*Appointed August 26, 1963, to fill vacancy caused by the resignation of Jack L. Christian.

(D) Democrats 76
(R) Republicans 24

Total: 100
STANDING COMMITTEES OF THE SENATE

AERONAUTICS
Tompos (Chairman), Sharpe (Vice Chairman), Dahill, Hatcher, Wylie, Bowers and Miller.

AGRICULTURE
Parker (Chairman), Jasper (Vice Chairman), Gainer, Martin, McKown, Wylie, Johnson, Lambert and Wolfe.

BANKS AND CORPORATIONS
Kaufman (Chairman), Smith (Vice Chairman), Floyd, Millar, Moreland, Porter, Carrigan, Johnson and Lambert.

CLAIMS AND GRIEVANCES
Martin (Chairman), Kaufman (Vice Chairman), Gainer, Hedrick, McKown, Tompos, Knapp, Miller and Wolfe.

COUNTRIES AND MUNICIPAL CORPORATIONS
Martin (Chairman), Porter (Vice Chairman), Davis, Floyd, Gainer, Jasper, Bowers, Hubbard and Knapp.

EDUCATION
McKown (Chairman), Holden (Vice Chairman), Barnett, Davis, Hatcher, Jackson, Jasper, McCourt, Millar, Porter, Tompos, Carrigan, Johnson, Lambert and Powell.

EXAMINE CLERK'S OFFICE
Jasper (Chairman), Floyd (Vice Chairman) and Lambert.

FEDERAL RELATIONS
Kaufman (Chairman), Hatcher (Vice Chairman), Millar, Parker, Sharpe, Tompos, Bowers, Carrigan and Johnson.

FINANCE
McCourt (Chairman), Smith (Vice Chairman), Barnett, Floyd, Hatcher, Holden, Jackson, Jasper, Kaufman, Martin, Millar, Porter, Sharpe, Wylie, Bowers, Lambert, Powell and Wolfe.

FORFEITED, DELINQUENT AND UNAPPROPRIATED LANDS
Dahill (Chairman), Sharpe (Vice Chairman), Floyd, Kaufman, McCourt, Wylie, Hubbard, Lambert and Miller.

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SENATE COMMITTEES

INSURANCE
Barnett (Chairman), Davis (Vice Chairman), Jackson, Martin, Porter, Smith, Bowers, Hubbard and Lambert.

INTERSTATE COOPERATION
Jackson (Chairman), McKown (Vice Chairman), Smith, Bowers and Powell.

THE JUDICIARY
Moreland (Chairman), Kaufman (Vice Chairman), Barnett, Davis, Gainer, Hatcher, Hedrick, Holden, Jackson, McKown, Millar, Parker, Tompos, Carrigan, Hubbard, Johnson, Knapp and Miller.

LABOR
Hedrick (Chairman), Millar (Vice Chairman), Dahill, Davis, Holden, Porter, Tompos, Knapp and Wolfe.

MEDICINE AND SANITATION
Wylie (Chairman), Moreland (Vice Chairman), Dahill, Jasper, McCourt, Smith, Bowers, Johnson and Miller.

MILITIA
Porter (Chairman), Tompos (Vice Chairman), Holden, Kaufman, Millar, Moreland, Knapp, Lambert and Wolfe.

MINES AND MINING
Jackson (Chairman), Wylie (Vice Chairman), Davis, Gainer, Holden, Tompos, Bowers, Knapp and Powell.

NATURAL RESOURCES
Gainer (Chairman), Dahill (Vice Chairman), Barnett, Hatcher, Hedrick, Jasper, Martin, McKown, Tompos, Wylie, Bowers, Hubbard, Lambert, Miller and Wolfe.

PENITENTIARY
Holden (Chairman), Martin (Vice Chairman), Dahill, Floyd, Parker, Wylie, Hubbard, Knapp and Miller.

PRIVILEGES AND ELECTIONS
Floyd (Chairman), Tompos (Vice Chairman), Kaufman, McCourt, Parker, Smith, Knapp, Miller and Powell.

PUBLIC BUILDINGS AND HUMANE INSTITUTIONS
Sharpe (Chairman), Parker (Vice Chairman), Dahill, Davis, Gainer, Hatcher, Hedrick, Jackson, McKown, Millar, Hubbard, Johnson, Knapp, Lambert and Powell.
PUBLIC LIBRARY

Davis (Chairman), Hedrick (Vice Chairman), Floyd, Holden, Porter, Tompos, Bowers, Knapp and Powell.

PUBLIC PRINTING

Hatcher (Chairman), Barnett (Vice Chairman), Gainer, Kaufman, McKown, Porter, Johnson, Lambert and Wolfe.

RAILROADS

Gainer (Chairman), Millar (Vice Chairman), Davis, Jasper, Parker, Smith, Carrigan, Hubbard and Miller.

REDISTRICTING

Barnett (Chairman), Gainer (Vice Chairman), Jasper, Kaufman, McKown, Millar, Carrigan, Johnson and Wolfe.

ROADS AND NAVIGATION

Smith (Chairman), Floyd (Vice Chairman), Davis, Gainer, Hedrick, Jasper, Martin, McCourt, Parker, Porter, Sharpe, Wylie, Bowers, Carrigan, Hubbard, Johnson and Wolfe.

RULES

Carson (Chairman ex officio), Jackson, Martin, McCourt, Moreland, Smith, Wylie, Bowers and Carrigan.

TEMPERANCE

Millar (Chairman), Smith (Vice Chairman), Barnett, Davis, Floyd, Sharpe, Hubbard, Johnson and Powell.

VETERANS AFFAIRS

Tompos (Chairman), McCourt (Vice Chairman), Dahill, Floyd, Porter, Sharpe, Smith, Lambert and Powell.

JOINT COMMITTEE ON ENROLLED BILLS
ON THE PART OF THE SENATE

Parker (Chairman), McKown (Vice Chairman), Kaufman, Hubbard and Miller.

JOINT COMMITTEE ON GOVERNMENT AND FINANCE
ON THE PART OF THE SENATE

Carson (Chairman ex officio), McCourt, Moreland, Carrigan and Wolfe.

JOINT COMMITTEE ON JOINT RULES
ON THE PART OF THE SENATE

Carson (Chairman ex officio), Moreland and Carrigan.
STANDING COMMITTEES OF THE HOUSE OF DELEGATES
(AS OF FEBRUARY 15, 1964)

AGRICULTURE
Slonaker (Chairman), Kidd (Vice Chairman), Auvil, Belcher (Lincoln), Bowman, Corder, Covey, Edgar, Hawse, Hovermale, Kelley, Knight, Mace, Matney, McCoy, Moyers, Sawyers, Shriver, Wilt, Buck, Giffin, Liller, Michels, Ours and Weaver.

BANKING
Ford (Chairman), Belcher (Lincoln) (Vice Chairman), Black, Boiarsky, Bowman, Cann, Crandall, D'Aurora, Hill, Kidd, Lilly, Lohr, Madden, Marstiller, Mentz, Mills, Myles, Pauley, Watson, Ashley, Buck, Calendine, Casto, Ours and Seibert.

CLAIMS
Knight (Chairman), Nuzum (Vice Chairman), Abrams, Bailey, Bias, Bowman, Craig, Crandall, England, Frazer, Ghiz, Hager, Marstiller, Miller, Moyers, Myles, Ross, Slonaker, Watson, Buck, Giffin, Haden, Holderby, Kiester and Sammons.

COUNTIES, DISTRICTS AND MUNICIPALITIES
Tsapis (Chairman), Black (Vice Chairman), Abrams, Anderson, Bailey, Bias, Bowman, Brotherton, Christian, Ford, Hawse, Keister, Kelley, Lilly, Madden, Mentz, Miller, Ross, Tennant, Withrow, Casto, Holderby, Michael, Sammons, Seibert and Workman.

DELINQUENT LANDS
Given (Chairman), Castleberry (Vice Chairman), Baker, Bedell, Boiarsky, Brotherton, Covey, Craig, Gentile, Hager, Hill, Keister, Madden, Poindexter, Ross, Steptoe, Vickers, White, Wooten, Arbogast, Ashley, Calendine, Haden, Holderby and Liller.

EDUCATION
Wilson (Chairman), Bias (Vice Chairman), Auvil, Bailey, Belcher (Wyoming), Christian, Covey, Drewry, England, Frazer, Gentile, Given, Hager, Kelley, Mills, Pauley, Pyles, Schupbach, Wilt, Ashley, Buck, Calendine, Casto, Jones and Liller.

ELECTIONS
Lilly (Chairman), Miller (Vice Chairman), Anderson, Bailey, Blankenship, Boiarsky, Brotherton, Castleberry, Christian.

**FINANCE**
Boiarsky (*Chairman*), Hill (*Vice Chairman*), Bedell, Bias, Black, Cann, Castleberry, D’Aurora, Dye, Frazer, Ghiz, Hager, Lohr, McCoy, Pyles, Schupbach, Vickers, Watson, Withrow, Carey, Deem, Kiester, Ours, Poling and Sammons.

**FORESTRY AND CONSERVATION**
England (*Chairman*), Lohr (*Vice Chairman*), Anderson, Auvil, Barker, Belcher (Wyoming), Casey, Corder, Edgar, Holliday, Knight, Mace, McCoy, Nuzum, Sawyers, Shriver, Steptoe, Tennant, Wilt, Buck, Creel, Deem, Giffin, Liller and Weaver.

**GAME AND FISH**
McCoy (*Chairman*), Tennant (*Vice Chairman*), Barker, Corder, Edgar, England, Ford, Hawse, Hovermale, Keister, Knight, Lohr, Mace, Matney, Nuzum, Sawyers, Slonaker, Wilt, Wooten, Calendine, Creel, Giffin, Liller, Michael and Michels.

**HEALTH**
Drewry (*Chairman*), Casey (*Vice Chairman*), Abrams, Anderson, Bailey, Baker, Belcher (Wyoming), Bowman, Castleberry, Corder, Hager, Holliday, Madden, Marstiller, Matney, Miller, Poindexter, Tsapis, Wilt, Giffin, Holderby, Kiester, Michael, Michels and Workman.

**HUMANE INSTITUTIONS**
Withrow (*Chairman*), Craig (*Vice Chairman*), Bedell, Belcher (Wyoming), Blankenship, Board, Castleberry, Corder, Crandall, D’Aurora, Davidson, Drewry, Ghiz, Holliday, Mills, Moyers, Poindexter, Tsapis, Wilson, Arbogast, Casto, Giffin, Michael, Simonton and Workman.

**INSURANCE**
Hill (*Chairman*), Frazer (*Vice Chairman*), Belcher (Lincoln), Board, Castleberry, Dye, England, Gentile, Lilly, Mace, Marstiller, Mentz, Mills, Myles, Poindexter, Pyles, Schupbach, Steptoe, White, Arbogast, Buch, Calendine, Carey, Haden and Poling.

**INTERSTATE COOPERATION**
Hager (*Chairman*), Frazer (*Vice Chairman*), McCoy, Ours and Seibert.

**JUDICIARY**
White (*Chairman*), Nuzum (*Vice Chairman*), Abrams, Barker, Brotherton, Casey, Craig, Ford, Kidd, Knight, Lilly,
Madden, Marstiller, Mentz, Moyers, Myles, Ross, Steptoe, Tsapis, Buch, Casto, Haden, Simonton, Weaver and Workman.

**LABOR AND INDUSTRY**

Cann (*Chairman*), D'Aurora (*Vice Chairman*), Auvil, Bailey, Baker, Barker, Bedell, Board, Casey, Covey, Davidson, Drewry, Given, Holliday, Hovermale, Mace, Pyles, Sawyers, Wooten, Arbogast, Ashley, Carey, Haden, Poling and Simonton.

**MILITARY AFFAIRS**

Edgar (*Chairman*), Hawse (*Vice Chairman*), Blankenship, Board, Boiarsky, Covey, D'Aurora, Davidson, Drewry, Dye, Hovermale, Keister, Marstiller, Vickers, White, Wilt, Wilson, Withrow, Ashley, Buch, Creel, Jones, Seibert and Simonton.

**MINING**

Vickers (*Chairman*), Wooten (*Vice Chairman*), Abrams, Bailey, Belcher (Lincoln), Black, Blankenship, Cann, Covey, Davidson, Drewry, Ghiz, Given, Hill, Nuzum, Pauley, Pyles, Tennant, Withrow, Calendine, Carey, Creel, Deem, Liller and Sammons.

**PENAL INSTITUTIONS**

Schupbach (*Chairman*), Barker (*Vice Chairman*), Anderson, Auvil, Belcher (Wyoming), Bias, Cann, Casey, Christian, Corder, Edgar, Given, Holliday, Kelley, Mace, Madden, Mentz, Shriver, Wilson, Ashley, Giffin, Liller, Michael, Simonton and Weaver.

**RAILROADS**

Board (*Chairman*), Christian (*Vice Chairman*), Baker, Bedell, Belcher (Lincoln), Blankenship, Davidson, Ford, Hawse, Kidd, Matney, Mills, Poindexter, Sawyers, Schupbach, Shriver, Watson, White, Wilson, Creel, Deem, Holderby, Ours, Seibert and Workman.

**REDISTRICTING**

Watson (*Chairman*), Myles (*Vice Chairman*), Brotherton, Frazer, Given, Kelley, Kidd, Lilly, Lohr, McCoy, Nuzum, Pauley, Poindexter, Slonaker, Steptoe, Tsapis, Vickers, White, Wilson, Buck, Haden, Michels, Simonton, Weaver and Workman.

**ROADS**

Pauley (*Chairman*), Bowman (*Vice Chairman*), Baker, Barker, Bedell, Blankenship, Crandall, Davidson, Ghiz, Hovermale, Kelley, Madden, Miller, Moyers, Pyles, Sawyers, Slonaker, Withrow, Wooten, Arbogast, Casto, Deem, Jones, Michael and Weaver.

**TEMPERANCE**

Myles (*Chairman*), Matney (*Vice Chairman*), Abrams, Baker, Board, Boiarsky, Cann, D'Aurora, Dye, Gentile, Ghiz,
HOUSE COMMITTEES

Hager, Knight, McCoy, Ross, Slonaker, Tennant, Tsapis, Watson, Carey, Haden, Jones, Ours, Seibert and Weaver.

VETERANS AFFAIRS

Bias (Chairman), Dye (Vice Chairman), Anderson, Belcher, (Lincoln), Black, Brotherton, Christian, Craig, Crandall, Edgar, Hawse, Holliday, Keister, Mentz, Miller, Moyers, Schupbach, Steptoe, Wooten, Ashley, Buch, Creel, Jones, Kiester and Michael.

JOINT COMMITTEE ON ENROLLED BILLS
ON THE PART OF THE HOUSE

Crandall (Chairman), Shriver (Vice Chairman), Hovermale, Buck and Michels.

RULES

Singleton (Chairman ex officio), Boiarsky, Brotherton, Cann, Myles, Pauley, Poindexter, Watson, White, Buch, Ours and Seibert.

JOINT COMMITTEE ON GOVERNMENT AND FINANCE
ON THE PART OF THE HOUSE

Singleton (Chairman ex officio), Brotherton, Schupbach, Casto and Deem.

JOINT COMMITTEE ON JOINT RULES
ON THE PART OF THE HOUSE

Singleton (Chairman ex officio), Brotherton and Seibert.
AN ACT to amend and reenact section eight, article one, chapter forty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the effect of recorded contracts as to creditors and purchasers, and providing that a memorandum only of a lease need be recorded.

Be it enacted by the Legislature of West Virginia:

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

**Article 1. Acts Generally Void as to Creditors and Purchasers.**

Section 8. Effect of recorded contract as to creditors and purchasers; memorandum of lease may be recorded.

**Section 8. Effect of Recorded Contract as to Creditors and Purchasers; Memorandum of Lease May Be Recorded.**—Any contract in writing made in respect to real estate or goods and chattels in consideration of marriage; or any contract in writing made for the conveyance or
sale of real estate, or an interest or term therein of more than five years, or any other interest or term therein, of any duration, under which the whole or any part of the corpus of the estate may be taken, destroyed, or consumed, except for domestic use, shall, from the time it is duly admitted to record, be, as against creditors and purchasers, as valid as if the contract were a deed conveying the estate or interest embraced in the contract. In lieu of the recording of a lease pursuant to this section, there may be recorded with like effect a memorandum of such lease, executed by all persons who are parties to the lease and acknowledged in the manner to entitle a conveyance to be recorded. A memorandum of lease thus entitled to be recorded shall contain at least the following information with respect to the lease: The name of the lessor and the name of the lessee and the addresses of such parties as set forth in the lease; a reference to the lease, with its date of execution; a description of the leased premises in the form contained in the lease; the rentals or royalties to be charged and terms of payment thereof; the term of the lease, with the date of commencement and the date of termination of such term, and if there is a right of extension or renewal, the maximum period for which, or date to which, the lease may be extended, or the number of times or date to which it may be renewed and the date or dates on which such rights of extension or renewal are exercisable. Such memorandum shall constitute notice of only the information contained therein.

CHAPTER 2

(Com. Sub. for House Bill No. 485—Originating in the House Committee on the Judiciary)

[Passed March 6, 1963; in effect July 1, 1964. Approved by the Governor.]

AN ACT to amend and reenact sections nine, ten and sixteen, article one, chapter forty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relat-
ing to contracts, deeds and mortgages being invalid as to creditors and purchasers until recorded, when recordation in more than one county is necessary, and providing that certain sections of said article one shall have no application to the transfer or assignment of any interest created by a trust deed or mortgage.

Be it enacted by the Legislature of West Virginia:

That sections nine, ten and sixteen, article one, 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 9. Contracts and deeds invalid as to creditors and purchasers until recorded.

Section 10. When recordation in more than one county necessary.

Section 16. Certain sections not to apply to transfer or assignment of interest created by trust deed or mortgage.

Section 9. Contracts and Deeds Invalid as to Creditors and Purchasers Until Recorded.—Every such contract, every deed conveying any such estate or term, and every deed of gift, or trust deed or mortgage, conveying real estate shall be void, as to creditors, and subsequent purchasers for valuable consideration without notice, until and except from the time that it is duly admitted to record in the county wherein the property embraced in such contract, deed, trust deed or mortgage may be.

Sec. 10. When Recordation in More Than One County Necessary.—Notwithstanding any such writing shall be duly admitted to record in one county wherein there is real estate, it shall nevertheless be void as to such creditors and purchasers in respect to other real estate without the same, until it is duly admitted to record in the county wherein such other real estate may be.

Sec. 16. Certain Sections Not to Apply to Transfer or Assignment of Interest Created by Trust Deed or Mortgage.—The provisions of sections eight, nine, ten, thirteen, fourteen and fifteen of this article shall have no application to the transfer or assignment of any interest created by a trust deed or mortgage.
CHAPTER 3

(House Bill No. 191—By Mr. Madden)

[Passed March 7, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to publication of notice of time for receiving claims against decedent’s estate by a commissioner of accounts.

Be it enacted by the Legislature of West Virginia:

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

Article 2. Proof and Allowance of Claims against Estates of Decedents.

Section 2. Commissioner to publish notice of time for receiving claims against decedent's estate.

Section 2. Commissioner to Publish Notice of Time for Receiving Claims against Decedent’s Estate.—Within one month next succeeding the reference of the estate to a commissioner of accounts, he shall appoint a convenient time and place when and where claims against the estate may be presented, examined and allowed. The time so fixed by the commissioner shall be not less than four months nor more than six months from the date of the first publication of the notice hereinafter set forth. The commissioner shall give notice of such time and place by publishing once a week for three successive weeks, in some newspaper published in the county, a notice to the following effect:

To the Creditors and Beneficiaries of the Estate of A_________ B__________:

All persons having claims against the estate of the said A_________ B__________, deceased, whether due or not,
are notified to exhibit same, with the voucher thereof, legally verified, to the undersigned, at (designating the place) on or before the ...... day of ..........; otherwise they may by law be excluded from all benefit of said estate. All beneficiaries of said estate may appear on or before said day to examine said claims and otherwise protect their interests.

Given under my hand this ...... day of ............., 19....

Commissioner of Accounts, County of .............

But if there be no newspaper published in the county, then the commissioner shall publish such notice in like manner in some newspaper of general circulation in the county. The publication of such notice shall be equivalent to personal service on the creditors, distributees and legatees, or any of them.

CHAPTER 4

(Senate Bill No. 90—By Mr. Floyd)

[Passed March 8, 1963: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article four, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, providing that a fiduciary of a trust fund averaging annually not more than eight hundred dollars income, the principal of which is not distributable until some future time, shall not be required to account, before time for distribution of the principal, oftener than once every three years unless otherwise directed by the court appointing such fiduciary.

Be it enacted by the Legislature of West Virginia:

That section six, article four, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
Article 4. Accounting by Fiduciaries.

Section 6. Fiduciaries of small estates may account once in three years.

Section 6. Fiduciaries of Small Estates May Account Once in Three Years.—A fiduciary who is in charge of a trust fund, the principal of which is not distributable until some future time, shall not be compellable by a commissioner of accounts to make statement of his account, before the time for distribution of principal, oftener than once in every three years, if he shows to the satisfaction of such commissioner that the income of the trust fund in his hands does not average annually more than eight hundred dollars; nor shall the fiduciary, in such case, lose his commissions, or suffer any penalties, for failure to account oftener than herein provided for: Provided, That upon proper application by an interested party to the court which appointed the fiduciary, and upon a sufficient and proper showing being made, such court may order such fiduciary to account at any time.

CHAPTER 5

(Senate Bill No. 142—By Mr. Davis)

(Passed March 9, 1963; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend article five, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven, providing for the designation of a testamentary trustee or trustees as beneficiary of a policy of life insurance.

Be it enacted by the Legislature of West Virginia:

That article five, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eleven, to read as follows:
Article 5. General Provisions as to Fiduciaries.

Section 11. Designation of Testamentary Trustee as Beneficiary of Insurance.

- A policy of life insurance may designate as beneficiary a trustee or trustees named or to be named by will, if the designation is made in accordance with the provisions of the policy and the requirements of the insurer. The proceeds of such insurance shall be paid to the trustee or trustees to be held and disposed of under the terms of the will as they exist at the death of the testator; but if no trustee or trustees make claim to the proceeds from the insurance company within one year after the death of the insured, or if satisfactory evidence is furnished the insurance company within such one year period showing that no trustee can qualify to receive the proceeds, payment shall be made by the insurance company to the executors, administrators or assigns of the insured, unless otherwise provided by agreement with the insurance company during the lifetime of the insured. The proceeds of the insurance as collected by the trustee or trustees shall not be subject to debts of the insured or to inheritance tax to any greater extent than if such proceeds were payable to any other named beneficiary other than the estate of the insured, and shall not be considered as payable to the estate of the insured for any purpose. Such insurance proceeds so held in trust may be commingled with any other assets which may properly come into such trust as provided in the will. Enactment of this section shall not invalidate previous life insurance policy designations naming trustees of trusts established by will.

CHAPTER 6

(Senate Bill No. 91—By Mr. Floyd)

[Passed March 8, 1963; in effect ninety days from passage. Approved by the Governor.]
sand nine hundred thirty-one, as amended, relating to the settlement of the accounts of a guardian or committee under the uniform veterans' guardianship act.

Be it enacted by the Legislature of West Virginia:

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

Article 15. Veterans' Guardianship and Commitment.

Section 8. Settlement of Accounts.—Every guardian, who shall receive on account of his ward any moneys from the government of the United States or any agency thereof, shall file with a commissioner of accounts annually, on the anniversary date of the appointment, or within thirty days thereafter, in addition to such other accounts as may be required, a full, true, and accurate account under oath of all moneys so received by him, of all disbursements thereof, and showing the balance thereof in his hands at the date of such account and how invested: Provided, That in cases where the income received by the committee or guardian does not average annually more than eight hundred dollars, the committee or guardian may make his report of account to the commissioner once in every three years. A true copy of each such account filed with such commissioner of accounts shall be sent by such commissioner of accounts to the office of the bureau or other agency of the government having jurisdiction over the area in which such court is located and from which payments are made. The commissioner of accounts shall fix a time and place for the hearing on such account not less than fifteen nor more than thirty days from the date of filing the same, and notice thereof shall be given by the commissioner of accounts to the aforesaid bureau or other agency of the government not less than fifteen days prior to the date fixed for the hearing. Notice of such hearing shall in like manner be given to the guardian.
AN ACT to amend and reenact section one, article two-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to inspection of meats and meat products.

Be it enacted by the Legislature of West Virginia:

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

Article 2-b. Inspection of Meats and Meat Products.

Section 1. Definitions.—For the purpose of this article the following definitions shall prevail:

(a) The term “slaughterhouse” means an establishment, including all buildings, structures and facilities used in connection therewith, where livestock of any species are slaughtered or dressed for food intended for human consumption; excepting, however, livestock slaughtered by an owner for his own use or for sale in isolated transactions where such sale is not made in the ordinary course of repeated and successive transactions of like character by such owner.

(b) The term “packing plant” means an establishment, including all chill rooms, aging rooms, processing rooms, and sanitary facilities, together with all buildings, structures and facilities or utensils used in connection therewith, with or without slaughtering facilities, where livestock carcasses or edible products derived therefrom are cured, salted, processed, packaged, or otherwise prepared as food intended for human consumption; excepting however livestock carcasses or edible products derived therefrom which are cured, salted, processed, packaged, or otherwise prepared by an owner for his own use or sale as
an isolated transaction when such sale is not being made in the ordinary course of repeated and successive transactions of like character by the owner.

(c) The term "livestock" means animals used for food for human consumption, but shall not include poultry or rabbits.

(d) The term "person" means any individual, firm, partnership, corporation, company, society or association, or any officer, agent or employee thereof, and such term shall import either the singular or the plural, as the case may be.

(e) "Commissioner" shall mean the state commissioner of agriculture.

CHAPTER 8

(House Bill No. 435—By Mr. Knight and Mr. Seibert)

[Passed February 28, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine-a, relating to the feeding of untreated garbage to swine.

Be it enacted by the Legislature of West Virginia:

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

Article 9-a. Feeding of Untreated Garbage to Swine.

Section

1. Definitions.
2. Permit for feeding garbage to swine.
3. Application for permit.
4. Revocation of permit.
5. Cooking or other treatment.
6. Inspection and investigation; maintenance of records.
7. Enforcement of article; rules and regulations.
8. Penalties.

Section 1. Definitions.—The following words shall have the meanings ascribed to them in this section, unless the
context otherwise requires or a different meaning is specifically prescribed:

(a) “Garbage” means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of foods including animal carcasses or parts thereof;

(b) “Persons” means the state, any municipality, political subdivision, institution, public or private corporation, individual, partnership, or other entity;

(c) “Commissioner” means the state commissioner of agriculture or his authorized agents.

Sec. 2. Permit for Feeding Garbage to Swine.—(a) No person shall feed garbage to swine without first securing a permit to do so from the commissioner. Such permits shall be renewed annually. The fee for obtaining such permit shall be five dollars.

(b) This article shall not apply to any person who feeds only his own household garbage to swine which are raised for such person’s own use.

Sec. 3. Application for Permit.—Any person desiring to obtain a permit to feed garbage to swine or to renew the same shall make written application therefor to the commissioner on forms provided by the commissioner.

Sec. 4. Revocation of Permit.—Upon determination by the commissioner that any person holding such permit, or who has applied for a permit hereunder, has violated or failed to comply with any of the provisions of this article, or any of the rules or regulations promulgated thereunder, the commissioner may revoke such permit or refuse to issue a permit to such applicant.

Sec. 5. Cooking or Other Treatment.—All garbage, regardless of previous processing, shall, before being fed to swine, be thoroughly heated to at least 212° F. for at least thirty minutes, unless treated in some other manner which shall be approved in writing by the commissioner as being equally effective for the protection of public health and control of livestock diseases.

Sec. 6. Inspection and Investigation; Maintenance of Records.—(a) Any authorized representative of the com-
missioner shall have the power to enter at reasonable
times upon any private or public property for the purpose
of inspecting and investigating conditions relating to the
treating of garbage to be fed to swine.
(b) The commissioner may require maintenance of
records relating to the operating of equipment for and
procedure of treating garbage to be fed to swine and
any authorized representative of the commissioner
may examine any such records or memoranda per-
taining to the feeding of garbage to swine. Copies of
such records shall be submitted to the commissioner
upon request.

Sec. 7. Enforcement of Article; Rules and Regulations.
The commissioner is hereby charged with administra-
tion and enforcement of the provisions of this article,
and is authorized to make and enforce all rules and regu-
lations which the commissioner may deem necessary to
carry out the purposes of the article.

Sec. 8. Penalties.—Any person who shall violate any
of the provisions of, or who fails to perform any duty
imposed by, this article, or who violates any rule or regu-
lation promulgated thereunder shall be guilty of a mis-
demeanor, and, upon conviction thereof, may be punished
by a fine of not less than twenty-five dollars nor more
than three hundred dollars, or by imprisonment for a
term of not more than one year, or by both such fine and
imprisonment. In addition thereto, such person may be
enjoined from continuing such violation. Each day upon
which such violation occurs shall constitute a separate
violation of this article.

CHAPTER 9
(House Bill No. 512—By Mr. Knight)

[Passed March 2, 1963; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to repeal article twelve-a, chapter nineteen of the
code of West Virginia, one thousand nine hundred thirty-
Chapter 10

Ch. 10] AGRICULTURE 13

one, as amended, relating to the West Virginia state apple commission.

Be it enacted by the Legislature of West Virginia:


Section 1. Repeal of article creating West Virginia State Apple Commission.—Article twelve-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 10

(House Bill No. 168—By Mr. Moyers)

[Passed February 23, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state soil conservation committee.

Be it enacted by the Legislature of West Virginia:

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

Article 21-a. Soil Conservation Districts.

Section 4. State soil conservation committee.

Section 4. State Soil Conservation Committee.—(a)

There is hereby established, to serve as an agency of the state and to perform the functions conferred upon it in this article, the state soil conservation committee. The committee shall consist of seven members. The following shall serve, ex officio, as members of the committee: The director of the state agricultural extension service; the director of the state agricultural experiment station; the director of the department of natural resources; and the
state commissioner of agriculture, who shall be chairman of the committee.

The governor shall appoint as additional members of the committee three representative citizens. The term of members thus appointed shall be four years, except that of the first members so appointed, one shall be appointed for a term of two years, one for a term of three years, and one for a term of four years. In the event of a vacancy, appointment shall be for the unexpired term.

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

The committee shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this article.

(b) The state soil conservation committee may employ an administrative officer and such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. The committee may call upon the attorney general of the state for such legal services as it may require. It shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. The committee is empowered to secure necessary and suitable office accommodations, and the necessary supplies and equipment. Upon request of the committee, for the purpose of carrying out any of its functions, the supervising officer of any state agency, or of any state institution of learning shall, insofar as may be possible, under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the committee, members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the committee may request.

(c) A member of the committee shall hold office so long as he shall retain the office by virtue of which he
shall be serving on the committee. A majority of the committee shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination. The chairman and members of the committee shall receive no compensation for their services on the committee, but shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee. The committee shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate public record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

(d) In addition to the duties and powers hereinafter conferred upon the state soil conservation committee, it shall have the following duties and powers:

1) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs;

2) To keep the supervisors of each of the several districts, organized under the provisions of this article, informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them;

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

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

5) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable;

6) To accept and receive donations, gifts, contribu-
tions, grants, and appropriations in money, services, materials or otherwise, from the United States or any of its agencies, from the state of West Virginia, or from other sources, and to use or expend such money, services, materials, or other contributions in carrying out the policy and provisions of this article, including the right to allocate such money, services, or materials in part to the various soil conservation districts created by this article in order to assist them in carrying on their operations;

(7) To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, operate and improve any properties acquired, to receive and retain income from such property and to expend such income as required for operation, maintenance, administration or improvement of such properties or in otherwise carrying out the purposes and provisions of this article; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this article. Money received from the sale of land acquired in the small watershed program shall be deposited in the special account of the state soil conservation committee and expended as herein provided.

CHAPTER 11
(Senate Bill No. 78—By Mr. Millar)

[Passed February 13, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article three, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact section six, article six thereof, relating to limitation on the sale and transportation of alcoholic liquor.

Be it enacted by the Legislature of West Virginia:

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

Article

Article 3. Sales by Commission.

Section
21. Limitation on amount to be sold.

Section 21. Limitation on Amount to Be Sold.—Not
2 more than one gallon of alcoholic liquor shall be sold to
3 a person at one time; but a sale in excess of one gallon
4 may be made to a person licensed to purchase at whole-
5 sale, and to a religious organization purchasing wine for
6 sacramental purposes, and sales in case lots may be made
7 in the discretion of the commissioner.


Section
6. Transportation of not to exceed one gallon.

Section 6. Transportation of Not to Exceed One Gallon.
2 —The provisions of this chapter shall not prevent a person
3 from bringing into or transporting in this state, in his pos-
4 session or in his baggage, and not for resale, alcoholic
5 liquor in a quantity not to exceed one gallon: Provided,
6 That upon written permission of the commissioner, quan-
7 tities of alcoholic liquor in excess of one gallon may be
8 transported within this state.

CHAPTER 12

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

[Passed March 11, 1963; in effect from passage.]

AN ACT making appropriations of public money out of the
treasury in accordance with section fifty-one, article six
of the constitution.
Be it enacted by the Legislature of West Virginia:

Title

2. Appropriations.
3. Administration.

Title 1. General Provisions.

Section

1. General policy.
2. Definitions.
3. Classification of appropriations.

Section 1. General Policy.—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 year one thousand nine hundred sixty-four.

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 sixty-four shall mean the period from July first, one thousand nine hundred sixty-three through June thirtieth, one thousand nine hundred sixty-four;
“From collections” shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the collection. If the amount collected exceeds the amount designated “from collections”, the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-one.

Sec. 3. Classification of Appropriations.—An appropriation for:
“Personal services” shall be expended only for the payment of salaries, wages, fees and other compensation for skill, work, or employment;
Unless otherwise specified, appropriations for personal services shall include salaries of heads of spending unit; "Current expenses" shall be expended only for operating cost other than personal services or capital outlay; "Repairs and alterations" shall include all expenditures for materials, supplies and labor used in repairing and altering buildings, grounds and equipment, other than personal services; "Equipment" shall be expended only for things which have an appreciable and calculable period of usefulness in excess of one year; "Buildings" shall include construction and alteration of structures and the improvements of lands, sewer and water improvements, and shall include shelter, support, storage, protection, or the improvement of a natural condition; "Lands" shall be expended only for the purchase of lands or interest in lands.

Appropriations otherwise classified shall be expended only where the distribution of expenditures for different purposes cannot well be determined in advance or it is necessary or desirable to permit the spending unit freedom to spend an appropriation for more than one of the above purposes.

Sec. 4. Method of Expenditure.—Money appropriated by this act, unless otherwise specifically directed, shall be appropriated and expended according to the provisions of article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, or according to any law detailing a procedure specifically limiting that article.

Title 2. Appropriations.

Section 1. Appropriations from general revenue.

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Acct. No. 513 ................................................................... 48
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Commission on interstate cooperation—Acct. No. 472 ............... 45
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Department of commerce—Acct. No. 465
Department of mines—Acct. No. 460
Interstate commission on Potomac river basin—Acct. No. 473
Ohio river valley water sanitation commission—Acct. No. 474
Southern regional education board—Acct. No. 475
West Virginia air pollution commission—Acct. No. 476
West Virginia historic commission—Acct. No. 477
West Virginia nonintoxicating beer commissioner—
   Acct. No. 490
West Virginia racing commission—Acct. No. 495
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West Virginia industrial home for girls—Acct. No. 372
West Virginia industrial school for boys—Acct. No. 370
West Virginia penitentiary—Acct. No. 375
West Virginia state prison for women—Acct. No. 374

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Natural resources commission—Acct. No. 565
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   Acct. No. 521

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Marshall university—Acct. No. 320
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State board of school finance (state aid to schools)—Acct. No. 295
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State commissioner of public institutions—Acct. No. 190
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Board of osteopathy—Acct. No. 591
Board of pharmacy—Acct. No. 590
Board of registration for professional engineers—Acct. No. 594
Board of sanitarians—Acct. No. 599
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Adjutant general (state militia)—Acct. No. 580
Auditor's office (social security)—Acct. No. 582
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- Department of finance and administration (division of purchases—revolving fund)—Acct. No. 814 60
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3. Supplemental and deficiency appropriations.
4. Appropriations from surplus revenues.
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6. Specific funds and collection accounts.
7. Appropriations for refunding erroneous payments.
8. Sinking fund deficiencies.
9. Appropriations from taxes and license fees.
10. Appropriations to pay costs of publication of delinquent corporations.
11. Appropriations for local governments.
12. Total appropriations.
Section 1. Appropriations from General Revenue.—From the state fund, general revenue, there is hereby appropriated conditionally upon the fulfillment of the provisions set forth in chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-one, the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred sixty-four.

LEGISLATIVE
1—Senate

Acct. No. 101

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1962-63</td>
<td>Current Expenses and Contingent Fund</td>
<td>$30,000.00</td>
</tr>
<tr>
<td>1963-64</td>
<td>Salaries of Members</td>
<td>$48,000.00</td>
</tr>
<tr>
<td></td>
<td>Compensation and per diem of officers and attaches</td>
<td>$60,000.00</td>
</tr>
<tr>
<td></td>
<td>Mileage of Members</td>
<td>$2,800.00</td>
</tr>
<tr>
<td></td>
<td>Current Expenses and Contingent Fund</td>
<td>$135,000.00</td>
</tr>
</tbody>
</table>

7 The Clerk of the Senate is hereby authorized to expend from the Senate Current Expenses and Contingent Fund for the fiscal year 1963-64 an amount, not to exceed the sum of twenty-five thousand ($25,000.00) dollars, for the purpose of altering and furnishing the Senate Finance and Judiciary Committee rooms in the main unit of the Capitol Building.

16 To pay Clerk of the Senate for compiling and publishing the West Virginia Blue Book, the distribution of which shall be made by the office of the Clerk of the Senate and shall include seventy-five copies for each member of the Legislature and two copies to each classified and approved High and
23 Junior High School and one to each Elementary School within the state.  
24 To pay cost of printing the 1963 edition of 
25 Blue Book.  
26 Drafting service.  
27 The appropriations for the Senate for the 
28 fiscal year 1962-63 are to remain in full 
29 force and effect, and are hereby reappropriated to June 30, 1964. 
30 Any balances so reappropriated may be 
31 transferred and credited to the 1963-64 accounts. 
32 Upon the written request of the Clerk of the 
33 Senate the State Auditor shall transfer 
34 amounts between items of the total appropriation in order to protect or increase the 
35 efficiency of the service. 
36 The Clerk of the Senate is authorized to draw 
37 his requisitions upon the Auditor, payable 
38 out of the contingent fund of the Senate, 
39 for any bills for supplies and services that 
40 may have been incurred by the Senate and 
41 not included in the appropriation bill, and 
42 for bills for supplies and services incurred 
43 after adjournment, and for the necessary 
44 operation of the Senate offices, the requisition for same to be accompanied by the 
45 bills to be filed with the Auditor. 

2—House of Delegates

Acct. No. 102

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>1962-63</th>
<th>1963-64</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Compensation and per diem of officers and attaches</td>
<td>$30,000.00</td>
<td></td>
</tr>
<tr>
<td>3 Salaries of Members</td>
<td>$150,000.00</td>
<td></td>
</tr>
</tbody>
</table>
Ch. 12]  

4 Compensation and per diem of officers and attaches ........................................ 75,000.00
5 Mileage of Members ................................................................. 7,500.00
6 Current Expenses and Contingent Fund ........................................ 90,000.00
7 Drafting Service ...................................................................... 5,000.00

9 The House Committee on Rules, with the approval of the Speaker, is hereby au-
10 thorized to expend from the House Contingent Fund for the fiscal year 1963-64 an
11 amount, not to exceed the sum of fifteen thousand ($15,000.00) dollars, for the pur-
12 pose of carpeting the House Chamber, altering the electrical wiring for the roll call
13 and public address systems, and additional desks for members, if needed, in said
14 Chamber in the main unit of the Capitol Building.
15
21 The appropriations for the House of Delegates for the fiscal year 1962-63 are to re-
22 main in full force and effect, and are hereby reappropriated to June 30, 1964.
23
25 Any balances so reappropriated may be transferred and credited to the 1963-64 ac-
26 counts.
27
28 Upon the written request of the Clerk of the House of Delegates the State Auditor shall
29 transfer amounts between items of the total appropriation in order to protect or
30 increase the efficiency of the service.
31
33 The Clerk of the House of Delegates, with approval of the Speaker, is authorized to
34 draw his requisitions upon the Auditor, payable out of the contingent fund of the
35 House of Delegates, for any bills for supplies and services that may have been in-
36 curred by the House of Delegates, and not included in the appropriation bill, for bills
37 for services and supplies incurred in preparation for the opening of the session and
after adjournment, and for the necessary operation of the House of Delegates offices, the requisition for same to be accompanied by bills to be filed with the Auditor. For duties imposed by law and by the House of Delegates, including the salary allowed by law as keeper of the rolls, the Clerk of the House of Delegates shall be paid a salary of $925.00 per month, payable from the contingent fund of the House of Delegates, and the Clerk may employ a secretary and a clerk at a salary to be determined by the Speaker of the House of Delegates.

3—Joint Expenses

Acct. No. 103

1 To pay the cost of legislative printing and stationery ........................................... $ 75,000.00
2 Commission on Interstate Cooperation ........ 15,000.00
3 Joint Committee on Government and Finance .................................................. 260,000.00
4 Other Authorized Legislative Committees ... 30,000.00

The appropriations for Joint Expenses for the fiscal year 1962-63 are to remain in full force and effect, and are hereby re-appropriated to June 30, 1964.

Any balances so reappropriated may be transferred and credited to the 1963-64 accounts.

Upon the written request of the Clerk of the Senate and the Clerk of the House of Delegates the State Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.
### JUDICIAL

#### 4—Supreme Court of Appeals

**Acct. No. 110**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Salaries of Judges</td>
<td>$95,000.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$116,150.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$22,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$2,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$235,650.00</strong></td>
</tr>
</tbody>
</table>

#### 5—Judicial—Auditor’s Office

**Acct. No. 111**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salaries of Judges</td>
<td>$381,000.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$81,000.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$26,000.00</td>
</tr>
<tr>
<td>4 Judges’ Retirement System</td>
<td>$43,000.00</td>
</tr>
<tr>
<td>5 Criminal Charges</td>
<td>$282,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$813,000.00</strong></td>
</tr>
</tbody>
</table>

6 This appropriation shall be administered by the State Auditor who shall draw his requisition for warrants in payment of salaries in the form of payrolls, making deductions therefrom as required by law, for taxes and other items. The appropriation for Judges’ Retirement System is to be transferred to the Judges’ Retirement Fund, in accordance with the law relating thereto, upon requisition of the State Auditor.

#### 6—State Law Library

**Acct. No. 114**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$22,180.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$16,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$40,680.00</strong></td>
</tr>
</tbody>
</table>
### APPROPRIATIONS

#### 7—Judicial Council

**Acct. No. 118**

1. To pay expenses of Members of the Council. $12,000.00

#### EXECUTIVE

#### 8—Governor’s Office

**Acct. No. 120**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Governor</td>
<td>$17,500.00</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$80,540.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$25,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>Civil Contingent Fund</td>
<td>$195,000.00</td>
</tr>
<tr>
<td>Of this appropriation there may be expended, at the discretion of the Governor, an amount not to exceed $1,000.00 as West Virginia’s contribution to the Interstate Oil Compact Commission.</td>
<td></td>
</tr>
<tr>
<td>Custodial Fund</td>
<td>$60,000.00</td>
</tr>
<tr>
<td>To be used for current general expenses, including compensation of servants and employees, household maintenance, cost of official functions, and any additional household expenses occasioned by such official functions.</td>
<td></td>
</tr>
<tr>
<td>West Virginia’s share of expenses for holding Southern Governors Conference in West Virginia during 1963</td>
<td>$35,000.00</td>
</tr>
</tbody>
</table>

| Total                                 | $418,040.00  |

#### 9—Board of Probation and Parole

**Acct. No. 123**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$194,760.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$86,310.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$2,000.00</td>
</tr>
</tbody>
</table>

| Total                                  | $283,070.00  |
### FISCAL

#### 10—Auditor's Office—General Administration

Acct. No. 150

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of State Auditor</td>
<td>$11,000.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$356,100.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$98,655.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$15,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$480,755.00</strong></td>
</tr>
</tbody>
</table>

#### 11—Treasurer's Office

Acct. No. 160

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of State Treasurer</td>
<td>$11,000.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$119,230.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$19,050.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>5 Microfilm Program</td>
<td>$7,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$166,280.00</strong></td>
</tr>
</tbody>
</table>

#### 12—Sinking Fund Commission

Acct. No. 170

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$21,900.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$1,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$22,900.00</strong></td>
</tr>
</tbody>
</table>

#### 13—State Tax Commissioner

Acct. No. 180

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,426,930.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$500,760.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$23,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,950,690.00</strong></td>
</tr>
</tbody>
</table>

#### 14—State Tax Commissioner

Acct. No. 185

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Property Appraisal</td>
<td>$1,892,892.00</td>
</tr>
<tr>
<td>2 Any balance remaining in the appropriation</td>
<td></td>
</tr>
</tbody>
</table>
"Property Appraisal" at the close of the fiscal year 1962-63 is hereby reappropriated for expenditure during the fiscal year 1963-64.

15—State Commissioner of Public Institutions

| Acct. No. 190 |  
| 1 Salary of Commissioner | $10,000.00  
| 2 Other Personal Services | $55,920.00  
| 3 Current Expenses | $11,275.00  
| 4 Equipment | $1,100.00  
| **Total** | **$78,295.00**

16—Department of Finance and Administration

| Acct. No. 210 |  
| 1 Personal Services | $501,435.00  
| 2 Current Expenses | $184,000.00  
| 3 Repairs and Alterations | $50,900.00  
| 4 Equipment | $19,000.00  
| 5 Postage | $130,000.00  
| 6 Records Management | $18,000.00  
| 7 Office of State Emergency Planning | $15,000.00  
| **Total** | **$918,335.00**

The Workmen’s Compensation Commission, Department of Welfare, Public Service Commission, Natural Resources Commission, Department of Motor Vehicles, State Road Commission, State Health Department and State Tax Commission—Income Tax Division, shall reimburse the Postage appropriation of the Department of Finance and Administration monthly for all meter service. Any spending unit operating from Special Revenue or receiving reimbursement for postage costs from the Federal Government shall refund to the "Postage Account" of the Department of
Finance and Administration such amounts.
Should this appropriation for postage be insufficient to meet the mailing requirements of the state spending units as set out above, any excess postage meter service requirements shall be a proper charge against the units, and each spending unit shall refund to the postage appropriation of the Department of Finance and Administration any amounts required for that department for postage in excess of this appropriation.
Any unexpended balance remaining in the "Postage Account" at the close of the fiscal year 1962-63 is hereby reappropriated for expenditure during the fiscal year 1963-64.

17—The Board of Public Works
Acct. No. 220
1 Contingent Fund .................................... $ 50,000.00

18—State Board of Insurance
Acct. No. 225
1 Personal Services .................................. $ 7,500.00
2 Current Expenses .................................. 2,200.00

3 Total .............................................. $ 9,700.00

LEGAL
19—Attorney General
Acct. No. 240
1 Salary of Attorney General .................. $ 12,000.00
2 Other Personal Services ......................... 198,810.00
3 Current Expenses ................................. 22,660.00
4 Equipment ......................................... 12,500.00
5 To protect the resources or tax structure of the State in controversies or legal proceedings affecting same .................. 3,250.00

8 Total .............................................. $ 249,220.00
9 When legal counsel is appointed by the Attorney General upon the request of the proper authority in any state spending unit, this account shall be reimbursed from such unit's appropriated account in an amount agreed upon by the Attorney General and the proper authority of said spending unit.

20—Commission on Uniform State Laws
Acct. No. 245
1 Total........................................... $ 3,150.00

INTEGRATING AND RECORDING
21—Secretary of State
Acct. No. 250
1 Salary of Secretary of State................................. $ 11,000.00
2 Other Personal Services...................................... 63,900.00
3 Current Expenses........................................... 14,470.00
4 Equipment.................................................. 3,300.00
5 Total................................................................... $ 92,670.00

EDUCATIONAL
22—State Board of Education—Vocational Division
Acct. No. 294
1 Total........................................................... $ 500,000.00
2 To be transferred to General School Fund (Acct. No. 701) and be administered in accordance with provisions of House Bill No. 7—1960 Legislature.
6 Any unexpended balance remaining in this account (294) at the close of the fiscal year 1962-63 is hereby reappropriated for expenditure during the fiscal year 1963-64.

23—State Board of School Finance—State Aid to Schools
Acct. No. 295
1 State Aid to supplement the General School Fund....................................................... $ 61,819,463.00
3 To be transferred to the General School Fund upon the requisition of the Governor.

6 Under the provisions of section eleven, article nine-a, chapter eighteen, Code of West Virginia, the Board of School Finance in determining the total foundation program for each county for the next fiscal year shall comply with the requirements set forth in House Bill No. 74 and House Bill No. 76, 1963 Legislature, in computing and certifying state aid to the several counties.

24—Department of Education—Aid for Exceptional Children
Acct. No. 296

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$14,540.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$4,200.00</td>
</tr>
<tr>
<td>Out-of-State Instruction</td>
<td>$30,000.00</td>
</tr>
<tr>
<td>Aid to Counties</td>
<td>$308,500.00</td>
</tr>
<tr>
<td>Total</td>
<td>$357,240.00</td>
</tr>
</tbody>
</table>

6 The appropriation for “Out-of-State Instruction” may be expended to provide instruction, care and maintenance for educable persons who have multiple handicaps and for whom the state provides no facilities.

25—Department of Education—Textbook Aid
Acct. No. 297

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Textbooks for Schools</td>
<td>$150,000.00</td>
</tr>
</tbody>
</table>

2 Textbooks for Schools to be distributed according to chapter fifty-one, acts of the Legislature, regular session, 1939.

26—Teachers Retirement Board
Acct. No. 298

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefit Fund—Payments to Retired Teachers</td>
<td>$3,005,974.00</td>
</tr>
<tr>
<td>Employers’ Accumulation Fund—To match</td>
<td></td>
</tr>
</tbody>
</table>
4 contribution of members ........................................ 3,344,000.00
5 Expense Fund .................................................. 33,304.00

6 Total ........................................................ $ 6,383,278.00

27—West Virginia University
Acct. No. 300

1 Personal Services ........................................... $ 8,747,982.00
2 Current Expenses ........................................... 1,282,000.00
3 Repairs and Alterations ................................... 400,000.00
4 Equipment ...................................................... 648,710.00
5 Oak Wilt Control Research ................................. 10,000.00
6 State aid to students of Veterinary Medicine .......... 48,000.00
7 Institute for Planning and Research ..................... 96,800.00
8 Bureau for Coal Research .................................. 100,000.00
9 Forest Products Development .............................. 30,000.00

10 Total ........................................................ $ 11,363,492.00

11 Out of the above appropriation for Personal Services, the sum of $8,500.00 shall be used only for the employment of a Spray Specialist who shall be stationed only at West Virginia University Farm at Kearneysville, and $7,200.00 for the employment of a Labor Specialist.

28—Potomac State College of West Virginia University
Acct. No. 315

1 Personal Services ........................................... $ 405,787.00
2 Current Expenses ........................................... 65,385.00
3 Repairs and Alterations ................................... 41,400.00
4 Equipment ...................................................... 35,300.00

5 Total ........................................................ $ 547,872.00

29—Marshall University
Acct. No. 320

1 Personal Services ........................................... $ 2,491,089.00
2 Current Expenses ........................................... 251,817.00
<table>
<thead>
<tr>
<th>Ch. 12</th>
<th>APPROPRIATIONS</th>
<th>35</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 Repairs and Alterations</td>
<td>$83,903.00</td>
<td></td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$118,515.00</td>
<td></td>
</tr>
<tr>
<td>5 Flood Wall Assessment</td>
<td>$3,200.00</td>
<td></td>
</tr>
<tr>
<td>6 Mason County Project</td>
<td>$18,000.00</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,966,524.00</strong></td>
<td></td>
</tr>
</tbody>
</table>

**30—Fairmont State College**  
Acct. No. 321

| 1 Personal Services | $835,447.00 |
| 2 Current Expenses | $92,832.00 |
| 3 Repairs and Alterations | $41,580.00 |
| 4 Equipment | $60,119.00 |
| **Total** | **$1,029,978.00** |

**31—Glenville State College**  
Acct. No. 322

| 1 Personal Services | $518,071.00 |
| 2 Current Expenses | $75,101.00 |
| 3 Repairs and Alterations | $45,340.00 |
| 4 Equipment | $38,535.00 |
| 5 Rural Education Development Program | $13,000.00 |
| **Total** | **$690,047.00** |

**32—West Liberty State College**  
Acct. No. 323

| 1 Personal Services | $652,657.00 |
| 2 Current Expenses | $89,500.00 |
| 3 Repairs and Alterations | $46,000.00 |
| 4 Equipment | $40,000.00 |
| **Total** | **$828,157.00** |

**33—Shepherd College**  
Acct. No. 324

| 1 Personal Services | $516,945.00 |
| 2 Current Expenses | $80,500.00 |
| 3 Repairs and Alterations | $36,815.00 |
### Appropriations

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Equipment</td>
<td>30,000.00</td>
</tr>
<tr>
<td>5</td>
<td>Rural Education Development Program</td>
<td>15,000.00</td>
</tr>
<tr>
<td>6</td>
<td><strong>Total</strong></td>
<td><strong>679,260.00</strong></td>
</tr>
</tbody>
</table>

#### 34—Concord College

**Acct. No. 325**

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>947,915.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>114,962.00</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>26,407.00</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>65,688.00</td>
</tr>
<tr>
<td>5</td>
<td><strong>Total</strong></td>
<td><strong>1,154,972.00</strong></td>
</tr>
</tbody>
</table>

#### 35—West Virginia Institute of Technology

**Acct. No. 327**

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>731,499.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>89,839.00</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>54,883.00</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>98,956.00</td>
</tr>
<tr>
<td>5</td>
<td><strong>Total</strong></td>
<td><strong>975,177.00</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for “Purchase of Land” at the close of the fiscal year 1962-63 is hereby reappropriated for expenditure during the fiscal year 1963-64.

#### 36—West Virginia State College

**Acct. No. 328**

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>1,149,300.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>166,600.00</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>89,484.00</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>61,000.00</td>
</tr>
<tr>
<td>5</td>
<td><strong>Total</strong></td>
<td><strong>1,466,384.00</strong></td>
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</table>

#### 37—Bluefield State College

**Acct. No. 329**

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>409,968.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>63,073.00</td>
</tr>
</tbody>
</table>
### Ch. 12] Appropriations

<table>
<thead>
<tr>
<th>Account</th>
<th>Services/Expenses</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>38,488.00</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>57,668.00</td>
</tr>
<tr>
<td>5</td>
<td>Training Development Center</td>
<td>15,000.00</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>584,197.00</td>
</tr>
</tbody>
</table>

#### 38—West Virginia State College—4-H Camp

**Acct. No. 330**

<table>
<thead>
<tr>
<th>Account</th>
<th>Services/Expenses</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>13,320.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>4,860.00</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>6,160.00</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>1,950.00</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>26,290.00</td>
</tr>
</tbody>
</table>

#### 39—West Virginia Schools for the Deaf and Blind

**Acct. No. 333**

<table>
<thead>
<tr>
<th>Account</th>
<th>Services/Expenses</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>539,305.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>160,330.00</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>40,700.00</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>20,850.00</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>761,185.00</td>
</tr>
</tbody>
</table>

#### 40—State FFA-FHA Camp and Conference Center

**Acct. No. 336**

<table>
<thead>
<tr>
<th>Account</th>
<th>Services/Expenses</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>31,800.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>6,800.00</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>5,550.00</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>8,500.00</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>52,650.00</td>
</tr>
</tbody>
</table>

#### 41—Department of Archives and History

**Acct. No. 340**

<table>
<thead>
<tr>
<th>Account</th>
<th>Services/Expenses</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>35,300.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>7,205.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>8,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>50,505.00</td>
</tr>
</tbody>
</table>
### Appropriations [Ch. 12]

#### 42—West Virginia Library Commission

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>350</td>
<td>1 Personal Services</td>
<td>$ 81,000.00</td>
</tr>
<tr>
<td></td>
<td>2 Current Expenses</td>
<td>$ 5,000.00</td>
</tr>
<tr>
<td></td>
<td>3 Equipment</td>
<td>$ 1,000.00</td>
</tr>
<tr>
<td></td>
<td>4 Books and Periodicals</td>
<td>$ 30,000.00</td>
</tr>
<tr>
<td></td>
<td>5 Library Services for the Blind</td>
<td>$ 5,000.00</td>
</tr>
<tr>
<td></td>
<td>6 Total</td>
<td>$ 122,000.00</td>
</tr>
</tbody>
</table>

#### Charities and Correction

#### 43—West Virginia Industrial School for Boys

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>370</td>
<td>1 Personal Services</td>
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<td>$ 121,450.00</td>
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<td>3 Repairs and Alterations</td>
<td>$ 39,200.00</td>
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<td>4 Equipment</td>
<td>$ 17,250.00</td>
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<tr>
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<td>5 Total</td>
<td>$ 407,900.00</td>
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#### 44—Forestry Camp for Boys

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
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<tr>
<td>371</td>
<td>1 Personal Services</td>
<td>$ 74,790.00</td>
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<td>2 Current Expenses</td>
<td>$ 83,700.00</td>
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<td>3 Repairs and Alterations</td>
<td>$ 10,900.00</td>
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<td>4 Equipment</td>
<td>$ 13,650.00</td>
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<td>5 Total</td>
<td>$ 183,040.00</td>
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#### 45—West Virginia Industrial Home for Girls

<table>
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<tr>
<td>372</td>
<td>1 Personal Services</td>
<td>$ 124,971.00</td>
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<td>2 Current Expenses</td>
<td>$ 75,545.00</td>
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<td>3 Repairs and Alterations</td>
<td>$ 12,600.00</td>
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<td></td>
<td>4 Equipment</td>
<td>$ 7,450.00</td>
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<td></td>
<td>5 Vocational Training</td>
<td>$ 5,000.00</td>
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<td>6 Total</td>
<td>$ 225,566.00</td>
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</table>
### 46—West Virginia State Prison for Women

**Acct. No. 374**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$37,420.00</td>
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<tr>
<td>Current Expenses</td>
<td>$31,390.00</td>
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<tr>
<td>Repairs and Alterations</td>
<td>$11,050.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$1,400.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$81,260.00</strong></td>
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</table>

### 47—West Virginia Penitentiary

**Acct. No. 375**

<table>
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<th>Item</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$606,280.00</td>
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<tr>
<td>Current Expenses</td>
<td>$483,200.00</td>
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<tr>
<td>Repairs and Alterations</td>
<td>$38,600.00</td>
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<td>Equipment</td>
<td>$33,200.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$1,161,280.00</strong></td>
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### 48—Medium Security Prison

**Acct. No. 376**

<table>
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<tr>
<td>Personal Services</td>
<td>$284,017.00</td>
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<tr>
<td>Current Expenses</td>
<td>$160,804.00</td>
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<tr>
<td>Repairs and Alterations</td>
<td>$15,000.00</td>
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<td>Equipment</td>
<td>$11,300.00</td>
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<td><strong>Total</strong></td>
<td><strong>$471,121.00</strong></td>
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### 49—West Virginia Children’s Home

**Acct. No. 380**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$45,065.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$39,280.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$4,400.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$4,250.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$92,995.00</strong></td>
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### 50—Andrew S. Rowan Memorial Home

**Acct. No. 384**

<table>
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<th>Item</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$180,360.00</td>
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<tr>
<td>Current Expenses</td>
<td>$154,186.00</td>
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<tr>
<td>Repairs and Alterations</td>
<td>$34,400.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$369,026.00</strong></td>
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### APPROPRIATIONS

**[Ch. 12]**

<table>
<thead>
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<tr>
<td>4</td>
<td>Equipment</td>
<td>$8,275.00</td>
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<td>5</td>
<td><strong>Total</strong></td>
<td><strong>$377,221.00</strong></td>
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**HEALTH AND WELFARE**

#### 51—State Health Department

**Acct. No. 400**

<table>
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<th>Description</th>
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<tr>
<td>1</td>
<td>Personal Services</td>
<td>$393,496.00</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$74,833.00</td>
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<tr>
<td>3</td>
<td>Equipment</td>
<td>$4,500.00</td>
</tr>
<tr>
<td>4</td>
<td>Cancer Control and Treatment</td>
<td>$125,000.00</td>
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<tr>
<td>5</td>
<td>Tuberculosis Field Clinic &amp; Nursing Service</td>
<td>$10,580.00</td>
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<td>6</td>
<td>Out-Patient Pneumothorax Treatment</td>
<td>$20,000.00</td>
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<tr>
<td>7</td>
<td>Local Health Services</td>
<td>$450,000.00</td>
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<tr>
<td>8</td>
<td>Heart Disease Control</td>
<td>$15,000.00</td>
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<tr>
<td>9</td>
<td><strong>Total</strong></td>
<td><strong>$1,093,409.00</strong></td>
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</table>

#### 52—Department of Veterans Affairs

**Acct. No. 404**

<table>
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<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$164,300.00</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$45,000.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$1,730.00</td>
</tr>
<tr>
<td>4</td>
<td>To provide Educational Opportunities for Children of War Veterans as provided by chapter thirty-nine, acts of the Legislature,</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>7</td>
<td>1943</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td><strong>Total</strong></td>
<td><strong>$226,030.00</strong></td>
</tr>
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</table>

9 Any unexpended balance remaining in the appropriation “To Provide Educational Opportunities for Children of War Veterans” at the close of the fiscal year 1962-63 is hereby reappropriated for expenditure during the fiscal year 1963-64.

#### 53—Department of Welfare

**Acct. No. 405**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$2,534,509.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$860,000.00</td>
</tr>
</tbody>
</table>
3 Equipment ........................................................................... 34,290.00
4 Public Assistance Grants (Classified Aid) ..................... 9,215,591.00
5 Aid to Crippled Children ................................................. 300,000.00
6 Medical Services and M.A.A. .......................................... 2,000,000.00
7 Conservation of Vision and Prevention of Blindness ........ 40,000.00
9 Child Welfare Services .................................................. 113,000.00
10 General Relief and Boarding Care ............................... 465,000.00
11 Social Security Matching Fund .................................... 60,900.00

12 Total ............................................................................... $15,623,290.00

54—Department of Mental Health

Acct. No. 410
1 Personal Services ......................................................... $ 214,224.00
2 Current Expenses ......................................................... 28,435.00
3 Equipment ....................................................................... 4,000.00
4 Research and Training .................................................... 25,000.00
5 Civil Service Costs ......................................................... 40,000.00
6 Division of Alcoholism .................................................... 25,000.00

7 Total ............................................................................... $ 336,659.00

55—West Virginia Training School

Acct. No. 419
1 Personal Services ......................................................... $ 492,900.00
2 Current Expenses ......................................................... 185,000.00
3 Repairs and Alterations ................................................. 43,100.00
4 Equipment ....................................................................... 19,000.00

5 Total ............................................................................... $ 740,000.00

56—Weston State Hospital

Acct. No. 420
1 Personal Services ......................................................... $ 1,597,407.00
2 Current Expenses ......................................................... 750,000.00
3 Repairs and Alterations ................................................. 48,000.00
4 Equipment ....................................................................... 25,000.00

5 Total ............................................................................... $ 2,420,407.00
57—Spencer State Hospital
Acct. No. 421
1 Personal Services ........................................... $ 735,700.00
2 Current Expenses ............................................. 383,000.00
3 Repairs and Alterations .................................... 49,000.00
4 Equipment .......................................................... 22,500.00
5 Total ................................................................. $ 1,190,200.00

58—Huntington State Hospital
Acct. No. 422
1 Personal Services ........................................... $ 1,166,700.00
2 Current Expenses ............................................. 605,000.00
3 Repairs and Alterations .................................... 42,000.00
4 Equipment .......................................................... 38,200.00
5 Total ................................................................. $ 1,851,900.00

59—Lakin State Hospital
Acct. No. 423
1 Personal Services ........................................... $ 473,076.00
2 Current Expenses ............................................. 199,000.00
3 Repairs and Alterations .................................... 44,500.00
4 Equipment .......................................................... 48,000.00
5 Total ................................................................. $ 764,576.00

60—Barboursville State Hospital
Acct. No. 424
1 Personal Services ........................................... $ 329,829.00
2 Current Expenses ............................................. 130,426.00
3 Repairs and Alterations .................................... 29,000.00
4 Equipment .......................................................... 5,500.00
5 Total ................................................................. $ 494,755.00

61—Fairmont Emergency Hospital
Acct. No. 425
1 Personal Services ........................................... $ 113,185.00
2 Current Expenses ............................................. 70,445.00
### 62—Welch Emergency Hospital

<table>
<thead>
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<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$151,510.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$130,000.00</td>
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<td>$40,000.00</td>
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<td>4 Equipment</td>
<td>$17,000.00</td>
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<td><strong>Total</strong></td>
<td><strong>$338,510.00</strong></td>
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### 63—Hopemont Sanitarium

<table>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$393,020.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$313,540.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$15,000.00</td>
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<td>4 Equipment</td>
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<td><strong>Total</strong></td>
<td><strong>$730,810.00</strong></td>
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### 64—Pinecrest Sanitarium

<table>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$575,130.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$462,940.00</td>
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<td>3 Repairs and Alterations</td>
<td>$26,600.00</td>
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<td>4 Equipment</td>
<td>$11,300.00</td>
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<td><strong>Total</strong></td>
<td><strong>$1,075,970.00</strong></td>
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### 65—Denmar State Hospital

<table>
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<tr>
<td>1 Personal Services</td>
<td>$368,675.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$149,470.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$38,730.00</td>
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<td>4 Equipment</td>
<td>$8,850.00</td>
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<td><strong>Total</strong></td>
<td><strong>$565,725.00</strong></td>
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### Appropriations

#### 66—Berkeley Springs Sanitarium
**Acct. No. 436**

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<tr>
<td>1 Personal Services</td>
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<td>2 Current Expenses</td>
<td>$6,800.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$7,700.00</td>
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<td>4 Equipment</td>
<td>$1,600.00</td>
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<td><strong>Total</strong></td>
<td><strong>$46,400.00</strong></td>
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#### 67—State Board of Education—Rehabilitation Division
**Acct. No. 440**

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<tr>
<td>1 Personal Services</td>
<td>$192,530.00</td>
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<td>2 Current Expenses</td>
<td>$39,432.00</td>
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<td>3 Rehabilitation Center</td>
<td>$113,929.00</td>
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<td>4 Case Services</td>
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<tr>
<td>5 Supervisory Services for Vending Stand</td>
<td>$16,658.00</td>
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<tr>
<td>6 Program for the Blind</td>
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<tr>
<td>7 Training and Special Projects</td>
<td>$16,000.00</td>
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<td><strong>Total</strong></td>
<td><strong>$733,549.00</strong></td>
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### Business and Industrial Relations

#### 68—Bureau of Labor and Department of Weights and Measures
**Acct. No. 450**

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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$281,960.00</td>
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<td>2 Current Expenses</td>
<td>$80,490.00</td>
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<td>3 Equipment</td>
<td>$6,500.00</td>
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<td><strong>Total</strong></td>
<td><strong>$368,950.00</strong></td>
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#### 69—Department of Mines
**Acct. No. 460**

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<td>1 Personal Services</td>
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<td>3 Equipment</td>
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<td><strong>$879,110.00</strong></td>
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70—Department of Commerce

Acct. No. 465

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<td>1 Personal Services</td>
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<td>2 Current Expenses</td>
<td>$311,380.00</td>
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<td>3 Equipment</td>
<td>$26,983.00</td>
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<tr>
<td>4 Mt. State Forest Festival</td>
<td>$20,000.00</td>
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<tr>
<td>5 Governor's Conference on Wood Utilization</td>
<td>$3,000.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$791,668.00</strong></td>
</tr>
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</table>

Any balance remaining in the appropriation “Urban Planning Revolving Fund”, and “1964 New York World’s Fair”, at the close of the fiscal year 1962-63, is hereby reapropriated for expenditure during the fiscal year 1963-64.

71—Commission on Interstate Cooperation

Acct. No. 472

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Total</td>
<td><strong>$10,000.00</strong></td>
</tr>
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</table>
| 2 Out of the above appropriation the sum of $7,500.00 may be made available for West Virginia’s membership in The Council of State Governments.

72—Interstate Commission on Potomac River Basin

Acct. No. 473

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 West Virginia’s contribution to Potomac River Basin Interstate Commission</td>
<td>$3,600.00</td>
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73—Ohio River Valley Water Sanitation Commission

Acct. No. 474

<table>
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<th>Item</th>
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<tbody>
<tr>
<td>1 West Virginia’s contribution to the Ohio River Valley Water Sanitation Commission</td>
<td>$15,860.00</td>
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74—Southern Regional Education Board

Acct. No. 475

<table>
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<th>Item</th>
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<tbody>
<tr>
<td>1 West Virginia’s contribution to Southern Regional Education Board</td>
<td><strong>$52,000.00</strong></td>
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To be expended upon requisition of the Governor.

### West Virginia Air Pollution Commission
**Acct. No. 476**

<table>
<thead>
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<th>Item</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$24,080.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$7,250.00</td>
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<td>3 Equipment</td>
<td>$2,050.00</td>
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<td><strong>Total</strong></td>
<td><strong>$33,380.00</strong></td>
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### West Virginia Historic Commission
**Acct. No. 477**

<table>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$800.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$26,700.00</td>
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<td><strong>Total</strong></td>
<td><strong>$27,500.00</strong></td>
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### Department of Banking
**Acct. No. 480**

<table>
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<th>Item</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$84,900.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$33,260.00</td>
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<tr>
<td>3 Equipment</td>
<td>$500.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$118,660.00</strong></td>
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### West Virginia State Aeronautics Commission
**Acct. No. 485**

<table>
<thead>
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<th>Item</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$13,220.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$5,710.00</td>
</tr>
<tr>
<td>3 Aerial Markers</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>4 Civil Air Patrol Expenses</td>
<td>$7,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$27,430.00</strong></td>
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### West Virginia Non-Intoxicating Beer Commissioner
**Acct. No. 490**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$91,320.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$43,700.00</td>
</tr>
</tbody>
</table>
3 Equipment ................................................. 800.00

4 Total ..................................................... $135,820.00

80—West Virginia Racing Commission

Acct. No. 495

1 Personal Services ........................................ $74,575.00
2 Current Expenses ......................................... 24,800.00

3 Total ..................................................... $99,375.00

AGRICULTURE

81—Department of Agriculture

Acct. No. 510

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of Commissioner</td>
<td>$11,000.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$179,787.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$73,185.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>5 Eradication and Control of White Pine Blister</td>
<td>$16,995.00</td>
</tr>
<tr>
<td>6 Eradication and Prevention of Livestock Diseases</td>
<td></td>
</tr>
<tr>
<td>7 Eradication and Control of Japanese beetle and other plant pests</td>
<td>$16,945.00</td>
</tr>
<tr>
<td>8 Aid To Dairy Development Program</td>
<td>$78,155.00</td>
</tr>
<tr>
<td>9 Eradication and Control of Oak Wilt</td>
<td>$88,820.00</td>
</tr>
<tr>
<td>10 Plant Pest Control</td>
<td>$21,680.00</td>
</tr>
</tbody>
</table>

14 Total ................................................................ $671,827.00

15 The appropriation “Eradication and Control of Oak Wilt” may be transferred to Special Revenue Funds for the purpose of matching Federal Funds.

82—Department of Agriculture—Soil Conservation Committee

Acct. No. 512

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$62,695.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$32,995.00</td>
</tr>
</tbody>
</table>

3 Total ................................................................ $95,690.00
Any unexpended balance remaining in the appropriation “Watershed Development” at the close of the fiscal year 1962-63 is hereby reappropriated for expenditure during the fiscal year 1963-64.

83—Department of Agriculture—Marketing and Research
Acct. No. 513
1 For cooperation with the Federal Government in a program of marketing and research $115,000.00
4 Any part or all of this appropriation may be transferred to Special Revenue Fund for the purpose of matching Federal Funds for the above named program.

84—Department of Agriculture—Agricultural Awards
Acct. No. 515
1 West Virginia State Fair $25,000.00
2 Agricultural Awards $43,000.00
3 Agricultural Centennial $3,500.00
4 Walnut Festival $3,500.00
5 Total $75,000.00

CONSERVATION AND DEVELOPMENT
85—Geological and Economic Survey Commission
Acct. No. 520
1 Personal Services $122,156.00
2 Current Expenses $36,471.00
3 Equipment $5,000.00
4 Cooperative Mapping Program $60,000.00
5 Total $223,627.00
6 Of the above appropriation for Current Expenses, the sum of $15,000.00 may be used to cooperate with the United States Geological Survey in Ground Waters Resources Study.
Of the above appropriation for Cooperative Mapping Program the sum of $10,000.00 may be used for preparation of accurate geographic and political maps of West Virginia.

### 86—Natural Resources Commission

**Acct. No. 521**

Any balance remaining in the 1960-61 appropriation “For construction of forest tree nursery facilities” and reappropriated for the fiscal year 1961-62, and reappropriated for expenditure during the fiscal year 1962-63, for “Planning, improvements and construction on Natural Resources property and facilities; land requisition and impoundments”, is hereby reappropriated for expenditure during the fiscal year 1963-64.

### 87—Department of Veterans Affairs

**Acct. No. 564**

In aid of Veterans Day Patriotic Exercises. $2,000.00

To be expended subject to the approval of the Department of Veterans Affairs upon presentation of satisfactory plans by the Grafton G.A.R. Post, American Legion, Veterans of Foreign Wars and Sons of Veterans.

### 88—Natural Resources Commission

**Acct. No. 565**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$909,240.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$254,225.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$114,400.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$86,201.00</td>
</tr>
<tr>
<td>Clarke-McNary—Fire Prevention</td>
<td>$85,000.00</td>
</tr>
<tr>
<td>Subsistence for Conservation Officers</td>
<td>$69,350.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,518,416.00</strong></td>
</tr>
</tbody>
</table>

The above appropriation “Subsistence for Conservation Officers” shall be paid at the rate of two dollars and fifty cents per cal-
endor day to the chief conservation officer
and to each full-time uniformed conserva-
tion officer, under his direct supervision,
whose primary duties and responsibilities
are law enforcement.

Any unexpended balance remaining in the
appropriation “Clarke-McNary—Fire Pre-
vention” at the close of the fiscal year
1962-63 is hereby reappropriated for ex-
penditure during the fiscal year 1963-64.

Any unexpended balance remaining in the
appropriation “For planning, improve-
ments and construction on Natural Re-
sources properties and facilities; land req-
uisition and impoundments,” at the close of
the fiscal year 1962-63 is hereby reappro-
priated for expenditure during the fiscal
year 1963-64 and out of this amount reap-
propriated there is hereby appropriated
$100,000.00 for acquisition of land and de-
velopment of recreational area near Sugar
Grove and/or acquisition of land and de-
velopment of a state park at Seneca Rocks.

PROTECTION

89—Department of Public Safety

Acct. No. 570

1 Personal Services ........................................ $ 1,589,142.00
2 Current Expenses ........................................ 766,745.00
3 Repairs and Alterations ................................ 22,600.00
4 Equipment ................................................... 107,000.00

5 Total ......................................................... $ 2,485,487.00

90—Adjutant General—State Militia

Acct. No. 580

1 Personal Services ........................................ $ 47,768.00
2 Current Expenses ........................................ 103,765.00
3 Repairs and Alterations ................................ 7,100.00
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 Equipment</td>
<td>6,300.00</td>
</tr>
<tr>
<td>5 Compensation of Commanding Officers,</td>
<td></td>
</tr>
<tr>
<td>6 Clerical Allowances and Uniform Allow-</td>
<td></td>
</tr>
<tr>
<td>ances</td>
<td>66,900.00</td>
</tr>
<tr>
<td>8 Property Maintenance</td>
<td>34,245.00</td>
</tr>
<tr>
<td>9 State Armory Board</td>
<td>695,102.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>961,180.00</strong></td>
</tr>
</tbody>
</table>

#### 91—Department of Civil and Defense Mobilization

**Acct. No. 581**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>35,340.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>11,045.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>4,300.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>50,685.00</strong></td>
</tr>
</tbody>
</table>

#### 92—Auditor’s Office—Social Security

**Acct. No. 582**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 To match contributions of state employees</td>
<td>1,139,675.00</td>
</tr>
<tr>
<td>3 The above appropriation is intended to</td>
<td></td>
</tr>
<tr>
<td>4 cover the state’s share of social security</td>
<td></td>
</tr>
<tr>
<td>5 costs for those spending units operating</td>
<td></td>
</tr>
<tr>
<td>6 from General Revenue Fund and General</td>
<td></td>
</tr>
<tr>
<td>7 School Fund appropriations. The State</td>
<td></td>
</tr>
<tr>
<td>8 Road Commission, Department of Motor</td>
<td></td>
</tr>
<tr>
<td>9 Vehicles, Workmen’s Compensation Com-</td>
<td></td>
</tr>
<tr>
<td>mission, Public Service Commission, and</td>
<td></td>
</tr>
<tr>
<td>11 other departments operating from special</td>
<td></td>
</tr>
<tr>
<td>12 Revenue Funds and/or Federal Funds</td>
<td></td>
</tr>
<tr>
<td>13 shall pay their proportionate share of</td>
<td></td>
</tr>
<tr>
<td>14 the social security cost for their respec-</td>
<td></td>
</tr>
<tr>
<td>tive divisions.</td>
<td></td>
</tr>
<tr>
<td>16 Any unexpended balance remaining in this</td>
<td></td>
</tr>
<tr>
<td>17 appropriation at the close of the fiscal year</td>
<td>1962-63 is hereby reappropriated for expend-</td>
</tr>
<tr>
<td>18</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td></td>
</tr>
</tbody>
</table>
93—State Board of Education—Insurance
Acct. No. 584
1 To insure contents of buildings $ 8,000.00
2 To insure contents of non-revenue produc-
ing buildings. Second annual installment
3 due on a policy covering a five-year period
ending July 1, 1967.

94—West Virginia Board of Accountancy
Acct. No. 586
1 To pay the per diem of members and other
2 general expenses $ 15,000.00
3 From Collections 15,000.00

95—West Virginia Board of Examiners
for Practical Nurses
Acct. No. 587
1 To pay the per diem of members and other
2 general expenses $ 15,000.00
3 From Collections 15,000.00

96—State Board of Examiners for Registered Nurses
Acct. No. 588
1 To pay the per diem of members and other
2 general expenses $ 33,825.00
3 From Collections 33,825.00

97—State Board of Dental Examiners
Acct. No. 589
1 To pay the per diem of members and other
2 general expenses $ 5,500.00
3 From Collections 5,500.00

98—State Board of Pharmacy
Acct. No. 590
1 To pay the per diem of members and other
2 general expenses $ 9,980.00
3 From Collections 9,980.00
99—State Board of Osteopathy
Acct. No. 591
1 To pay the per diem of members and other
general expenses $ 1,000.00
3 From Collections $ 1,000.00

100—State Board of Optometry
Acct. No. 592
1 To pay the per diem of members and other
general expenses $ 2,500.00
3 From Collections $ 2,500.00

101—State Board of Embalmers and Funeral Directors
Acct. No. 593
1 To pay the per diem of members and other
general expenses $ 10,000.00
3 From Collections $ 10,000.00

102—State Board of Registration for Professional Engineers
Acct. No. 594
1 To pay the per diem of members and other
general expenses $ 20,000.00
3 From Collections $ 20,000.00

103—State Board of Architects
Acct. No. 595
1 To pay the per diem of members and other
general expenses $ 4,000.00
3 From Collections $ 4,000.00

104—State Veterinary Board
Acct. No. 596
1 To pay the per diem of members and other
general expenses $ 300.00
3 From Collections $ 300.00
105—State Board of Law Examiners
Acct. No. 597
1 To pay the per diem of members and other
general expenses ............................................. $ 3,000.00

106—Human Rights Commission
Acct. No. 598
1 Personal Services ............................................. $ 12,885.00
2 Current Expenses ............................................. 8,692.00
3 Equipment ..................................................... 750.00
4 Total ........................................................... $ 22,327.00

107—West Virginia State Board of Sanitarians
Acct. No. 599
1 To pay the per diem of members and other
general expenses ............................................. $ 800.00
3 From Collections ............................................. 800.00

108—West Virginia Public Employees Retirement Board
Acct. No. 614
1 Employers Accumulation Fund ......................... $ 750,000.00
2 Expense Fund ............................................... 18,575.00
3 Total ........................................................... $ 768,575.00
4 The above appropriation is intended to cover
the state's share of the West Virginia Public Employees' Retirement cost in accord-
ance with Senate Bill No. 22, (1961 Legislature) for those departments operating
from General Revenue Fund and General
School Fund appropriations. The State
Road Commission, Department of Motor
Vehicles, State Tax Commissioner—Gas-
line Tax Division, Workmen's Compensa-
tion Commission, Public Service Commis-
sion, and other departments operating
from Special Revenue Funds and/or Fed-
eral Funds shall pay their proportionate share of the retirement costs for their respective divisions. When specific appropriations are not made such payments may be made from the balances in the various Special Revenue Funds in excess of specific appropriations.

109—State Road Commission

Acct. No. 641

1 Total.................................................$ 6,345,000.00

2 The purpose of the above appropriation is to aid in payment of interest and principal on outstanding road bonds and may be transferred to the state road fund upon the requisition of the Governor.

Sec. 2. Appropriations from Other Funds.—From the funds designated there is hereby appropriated conditionally upon the fulfillment of the provisions set forth in chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-one, the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred sixty-four.

110—State Road Commission—General Administration and Engineering

Acct. No. 670

TO BE PAID FROM STATE ROAD FUND

1 Personal Services .................................. $ 506,000.00
2 Current Expenses .................................... 145,615.00
3 Equipment ........................................... 9,000.00

4 Total..................................................... $ 660,615.00

5 In addition to the foregoing appropriations and claims as authorized by this act or by law to be paid from the state road fund, the balance or residue of the annual receipts of the state road fund is hereby appropriated first for the payment of interest
on and principal of outstanding road bonds, and thereafter for maintenance, construction and reconstruction of state roads, in accordance with the provisions of chapter seventeen, code of West Virginia, 1931, as amended.

111—Department of Motor Vehicles

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$777,700.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$300,000.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$42,040.00</td>
</tr>
<tr>
<td>4</td>
<td>Purchase of License Plates</td>
<td>$217,800.00</td>
</tr>
<tr>
<td>5</td>
<td>Social Security Matching Fund</td>
<td>$31,100.00</td>
</tr>
<tr>
<td>6</td>
<td>Employees Retirement Matching Fund</td>
<td>$31,770.00</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$1,400,410.00</td>
</tr>
</tbody>
</table>

112—State Tax Commissioner—Gasoline Tax Division

Acct. No. 672

TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$176,520.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$73,400.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$8,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Social Security Matching Fund</td>
<td>$6,400.00</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$264,320.00</td>
</tr>
</tbody>
</table>

113—State Board of Education

Acct. No. 700

TO BE PAID FROM GENERAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$36,932.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$12,680.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$800.00</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$50,412.00</td>
</tr>
</tbody>
</table>
### 114—State Board of Education—Vocational Division

**Acct. No. 701**

**TO BE PAID FROM GENERAL SCHOOL FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$38,517.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$7,350.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$3,200.00</td>
</tr>
<tr>
<td>4 Vocational Aid</td>
<td>$410,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>459,067.00</strong></td>
</tr>
</tbody>
</table>

---

### 115—Department of Education—Veterans Education

**Acct. No. 702**

**TO BE PAID FROM GENERAL SCHOOL FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$20,940.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$5,264.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>26,204.00</strong></td>
</tr>
</tbody>
</table>

Expenditures from this appropriation shall not exceed the amount to be reimbursed by the Federal Government. Federal funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the State Superintendent of Schools and approval of the Board of Public Works for any emergency which might arise in the operation of this division during the fiscal year.

### 116—Department of Education

**Acct. No. 703**

**TO BE PAID FROM GENERAL SCHOOL FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of State Superintendent</td>
<td>$12,000.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$290,000.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$81,505.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$5,943.00</td>
</tr>
<tr>
<td>5 National Defense Education Act</td>
<td>$140,000.00</td>
</tr>
</tbody>
</table>
6 Statewide Testing Program ........................................... 200,075.00
7 Experimental Projects .............................................. 15,000.00

8 Total............................................................................. $744,523.00
9 Any part or all of the appropriation for "National Defense Education Act" may be
10 transferred to a Special Revenue Fund for
11 the purpose of matching Federal Funds for
12 this program.

117—State Board of School Finance
Acct. No. 704

TO BE PAID FROM GENERAL SCHOOL FUND
1 Personal Services ....................................................... $19,090.00
2 Current Expenses ..................................................... 3,110.00

3 Total............................................................................. $22,200.00

118—Department of Education—School Lunch Program
Acct. No. 705

TO BE PAID FROM GENERAL SCHOOL FUND
1 Personal Services ....................................................... $55,645.00
2 Current Expenses ..................................................... 18,000.00
3 Aid to Counties—Includes hot lunches and
canning for hot lunches ........................................... 300,000.00

5 Total............................................................................. $373,645.00

119—Department of Education
Acct. No. 706

TO BE PAID FROM GENERAL SCHOOL FUND
1 Salaries of County Superintendents ......................... $63,000.00

120—Department of Education
Acct. No. 707

TO BE PAID FROM GENERAL SCHOOL FUND
1 State Aid to Children’s Home ..................................... $25,000.00
121—State Tax Commissioner—
Store and General Licenses Division
Acct. No. 712
TO BE PAID FROM GENERAL SCHOOL FUND

1 Personal Services ........................................... $ 36,800.00
2 Current Expenses ............................................. 3,500.00

3 Total ........................................................... $ 40,300.00

122—State Tax Commissioner
Acct. No. 713
TO BE PAID FROM GENERAL SCHOOL FUND

1 Enforcement of the Cigarette Sales Tax ........ $ 20,000.00

123—Department of Education
Acct. No. 715
TO BE PAID FROM GENERAL SCHOOL FUND

1 Scholarships for Teacher Training ................. $ 200,000.00

124—Real Estate Commission
Acct. No. 801
TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ........................................... $ 27,300.00
2 Current Expenses ........................................... 16,279.00
3 Social Security Matching Fund ....................... 860.00
4 Public Employees Retirement Matching Fund ..... 1,400.00

6 Total ........................................................... $ 45,839.00

7 The total amount of this appropriation shall
8 be paid from Special Revenue Fund out of
9 collections of license fees as provided by
10 law.
125—West Virginia Racing Commission
Acct. No. 808

TO BE PAID FROM SPECIAL REVENUE FUND

1 Medical Expenses ...........................................$ 5,000.00
2 The total amount of this appropriation shall
3 be paid from Special Revenue Fund out
4 of collections of license fees and fines as
5 provided by law.
6 No expenditures shall be made from this
7 account except for hospitalization, medical
8 care and/or funeral expenses for persons
9 contributing to this fund.

126—Auditor’s Office — Land Department
Operating Fund
Acct. No. 812

TO BE PAID FROM SPECIAL REVENUE FUND

1 Current Expenses .............................................$ 15,000.00
2 The total amount of this appropriation shall
3 be paid from Special Revenue Fund out
4 of fees and collections as provided by law.
5 Special funds in excess of the amount herein
6 appropriated may be made available by
7 budget amendments upon request of the
8 State Auditor and the approval of the
9 Board of Public Works.

127—Department of Finance and Administration
Division of Purchases—Revolving Fund
Acct. No. 814

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ...........................................$ 79,100.00
2 Current Expenses ........................................... 14,200.00
3 Equipment .................................................. 8,000.00
4 Social Security Matching Fund ......................... 2,875.00
5 Public Employees Retirement Matching Fund ................................................. 3,955.00

7 Total ........................................................................................................... $ 108,130.00

The total amount of this appropriation shall be paid from Special Revenue Fund as provided by chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-one.

The above appropriation includes salaries and operating expenses.

There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the purchase of supplies for resale.

128—Department of Agriculture
Acct. No. 818

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services .................................................. $ 161,990.00
2 Current Expenses .................................................. 40,700.00
3 Equipment .............................................................. 8,000.00
4 Social Security Matching Fund .................................. 4,500.00
5 Public Employees Retirement Matching Fund ............. 7,000.00

7 Total ........................................................................................................... $ 222,190.00

The total amount of this appropriation shall be paid from Special Revenue Fund out of collections made by the Department of Agriculture as provided by law. It is the intention that special funds in excess of the amounts hereby appropriated shall be made available by budget amendments upon request of the Commissioner of Agriculture.
### 129—State Committee of Barbers and Beauticians

**Acct. No. 822**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$32,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$17,050.00</td>
</tr>
<tr>
<td>3</td>
<td>Social Security Matching Fund</td>
<td>$960.00</td>
</tr>
<tr>
<td>4</td>
<td>Public Employees Retirement Matching Fund</td>
<td>$1,535.00</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$51,545.00</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of collections made by the State Committee of Barbers and Beauticians as provided by law.

### 130—Insurance Commissioner

**Acct. No. 826**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$104,285.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$14,430.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$3,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Social Security Matching Fund</td>
<td>$3,260.00</td>
</tr>
<tr>
<td>5</td>
<td>Public Employees Retirement Matching Fund</td>
<td>$5,215.00</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$130,190.00</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of collections for license and report fees as provided by law.

### 131—Insurance Commissioner—Fire Marshal

**Acct. No. 827**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$120,350.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$30,345.00</td>
</tr>
</tbody>
</table>
3 Equipment ........................................ 2,430.00
4 Building Repairs and Maintenance .............. 1,700.00
5 Social Security Matching Fund ................. 4,000.00
6 Public Employees Retirement Matching Fund .... 5,620.00

8 Total ........................................... $ 164,445.00

9 The total amount of this appropriation shall be paid from Special Revenue Fund out of collections of the special tax of one-half of one per cent of premium receipts of fire insurance companies as provided by law.

132—Public Service Commission

Acct. No. 828

TO BE PAID FROM SPECIAL REVENUE FUND

1 Salaries of Commissioners ....................... $ 30,000.00
2 Other Personal Services .......................... 400,784.00
3 Current Expenses ................................ 55,000.00
4 Equipment ....................................... 10,000.00
5 Social Security Matching Fund ................. 9,500.00
6 Public Employees Retirement Matching Fund .... 19,716.00
7 Fund ............................................. 525,000.00

8 Total ........................................... $ 525,000.00

9 The total amount of this appropriation shall be paid from Special Revenue Fund out of collections for special license fees from public service corporations as provided by law. Out of the above appropriation $5,000.00 may be transferred to the State Water Resources Commission of the Natural Resources Commission for use in cooperation with the U. S. Geological Survey in a program of stream gauging.
133—Public Service Commission—Motor Carrier Division
Acct. No. 829

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ........................................ $ 197,360.00
2 Current Expenses ........................................ 44,980.00
3 Equipment .................................................. 4,600.00
4 Social Security Matching Fund ............................ 5,900.00
5 Public Employees Retirement Matching Fund .......... 9,500.00

7 Total .......................................................... $ 262,340.00

8 The total amount of this appropriation shall be paid from Special Revenue Fund out of receipts collected for or by the Public Service Commission pursuant to and in the exercise of regulatory authority over motor carriers as authorized by law.

134—Natural Resources Commission
Acct. No. 830

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ........................................ $ 1,106,630.00
2 Current Expenses ........................................ 395,964.00
3 Repairs and Alterations ................................ 93,175.00
4 Equipment .................................................. 207,721.00
5 Land Purchase .............................................. 150,000.00

6 Total .......................................................... $ 1,953,490.00

7 The total amount of this appropriation shall be paid from Special Revenue Fund out of fees collected by the Natural Resources Commission. Expenditures shall be limited to the amounts appropriated except for Federal Funds received and Special Funds collected at state parks. Special Funds in excess of the amounts hereby ap-
propriated may be made available by budget amendment upon request of the Natural Resources Commission and approval of The Board of Public Works for any emergency which might arise in the operation of this division during the fiscal year.

135—Department of Public Safety—Inspection Fees

Acct. No. 835

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$104,352.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$70,304.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$7,100.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$18,000.00</td>
</tr>
<tr>
<td>5 Social Security Matching Fund</td>
<td>$633.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$200,389.00</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of fees collected for inspection stickers as provided by law.

Special Funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the Department of Public Safety and approval of the Board of Public Works for the purpose of repairs to, or construction of police barracks, not to exceed one hundred thousand dollars in any one fiscal year.

136—West Virginia Liquor Control Commissioner

Acct. No. 837

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of Commissioner</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$2,873,270.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$835,000.00</td>
</tr>
</tbody>
</table>
4 Repairs and Alterations ........................................... 32,500.00
5 Equipment .................................................................. 57,500.00
6 Social Security Matching Fund .................................. 104,156.00
7 Public Employees Retirement Matching Fund ............... 144,164.00

8 Total ......................................................................... 4,056,590.00

9 The total amount of this appropriation shall be paid from Special Revenue Fund out of liquor revenues.
10 The above appropriation includes the salaries of store personnel, store inspectors, store operating expenses and equipment; and salaries, expenses and equipment of administration offices.
11 There is hereby appropriated from liquor revenues, in addition to the above appropriation, the necessary amount for the purchase of liquor, as provided by law.

137—West Virginia Civil Service System

Acct. No. 840

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ....................................................... $ 88,400.00
2 Current Expenses ...................................................... 22,185.00
3 Social Security Matching Fund .................................. 2,900.00
4 Public Employees Retirement Matching Fund ............... 4,325.00

5 Total........................................................................... $ 117,810.00

6 The total amount of this appropriation shall be paid from Special Revenue Fund supported by participating agencies as provided by law.

10 The Board of Public Works is hereby authorized to make available by budget amendment, upon request of the Civil Service Commission, funds in excess of the amounts hereby appropriated that may become available as a result of acts of the Legislature—1961 Session.
### Ch. 12] Appropriations

#### 138—West Virginia University—Special Capital Improvement Fund

**Acct. No. 853**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Forestry Building</td>
<td>$340,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Creative Arts Building</td>
<td>$402,226.00</td>
</tr>
<tr>
<td><strong>3</strong></td>
<td><strong>Total</strong></td>
<td><strong>$742,226.00</strong></td>
</tr>
</tbody>
</table>

4 The total amount of this appropriation shall be paid from the non-revolving Capital Improvement Fund created by the 1959 Legislature.

5 Any unexpended balance remaining in this appropriation at the close of the fiscal year 1962-63 is hereby reappropriated for expenditure during the fiscal year 1963-64.

#### 139—State Board of Education—Special Capital Improvement Fund

**Acct. No. 854**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>West Liberty State College—Dormitory</td>
<td>$150,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Equipment</td>
<td>$150,000.00</td>
</tr>
<tr>
<td>3</td>
<td>Shepherd College—Library Building</td>
<td>$650,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Fairmont State College—Aid and Dormitory</td>
<td>$150,000.00</td>
</tr>
<tr>
<td><strong>5</strong></td>
<td><strong>Construction and Equipment</strong></td>
<td><strong>$950,000.00</strong></td>
</tr>
</tbody>
</table>

6 The total amount of this appropriation shall be paid from the non-revolving Capital Improvement Fund created by the 1959 Legislature.

7 Any unexpended balance remaining in this appropriation at the close of the fiscal year 1962-63 is hereby reappropriated for expenditure during the fiscal year 1963-64.
140—Workmen's Compensation Commission

Acct. No. 900

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$728,960.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$270,377.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$10,860.00</td>
</tr>
<tr>
<td>4</td>
<td>Social Security Matching Fund</td>
<td>$26,425.00</td>
</tr>
<tr>
<td>5</td>
<td>Public Employees Retirement Matching Fund</td>
<td>$37,448.00</td>
</tr>
</tbody>
</table>

**Total** | $1,074,070.00

8 There is hereby authorized to be paid out of the above appropriation for Current Expenses the amount necessary for the premiums on bonds given by the State Treasurer and bond custodian for the protection of the Workmen's Compensation Fund.

Sec. 3. Supplemental and Deficiency Appropriations.—
2 From the State Fund, General Revenue, except as otherwise provided, there are hereby appropriated the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred sixty-three to supplement the 1962-63 appropriations, and to be available for expenditure upon date of passage.

141—Governor's Office

Acct. No. 120

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Civil Contingent Fund</td>
<td>$50,000.00</td>
</tr>
</tbody>
</table>

142—Department of Finance and Administration

Acct. No. 210

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Postage</td>
<td>$40,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$54,000.00</td>
</tr>
</tbody>
</table>

**Total** | $94,000.00
143—Department of Welfare
Acct. No. 405
1 Personal Services ........................................... $150,000.00
2 (ADCU) Unemployed Parents ......................... 477,399.00
3 Total ............................................................. $627,399.00

144—Department of Mental Health
Acct. No. 410
1 Civil Service Costs ........................................... $4,223.00

145—Racing Commission
Acct. No. 495
1 Personal Services ........................................... $9,375.00
2 Current Expenses ............................................. 1,000.00
3 Total ............................................................. $10,375.00

146—Department of Agriculture
Acct. No. 510
1 Personal Services ........................................... $8,000.00
For Rabies Control

147—Department of Motor Vehicles
Acct. No. 671
TO BE PAID FROM STATE ROAD FUND
1 Personal Services ........................................... $50,000.00
2 Current Expenses ............................................. 32,000.00
3 Equipment ..................................................... 15,000.00
4 Total ............................................................. $97,000.00

Sec. 4. Appropriations from Surplus Revenues.—The following items are appropriated from the General Revenue Fund, subject to the following terms and conditions:
(a) The following items are hereby appropriated and are to be available for expenditure out of the surplus in
6 the Treasury, subject to the approval of the Board of Public Works.

8 (b) The Board of Public Works shall review the revenues of the State from the date that appropriations hereunder are expected to be made available for expenditure, and determine whether, in its opinion, revenues then in prospect or on hand will be sufficient to meet all appropriations under the 1962 Budget Act, and this section, and make a finding with respect thereof. In the event that such finding shall show sufficient revenues on hand or in prospect to meet all other appropriations and reappropriations made by the 1962 Budget Act, and subject to the foregoing conditions, any or all of the following items may be released for expenditure by the Board of Public Works from the date of passage of this act and such appropriation shall remain in full force and effect until June 30, 1964.

22 Item I. Medium Security Prison $10,000.00
23 Construction of two dams across Tygart River.

25 Item II. Industrial School for Boys 65,550.00
26 For water facilities and repairs to system.

27 Item III. West Liberty State College 18,500.00
28 For purchase of Center School.

29 Item IV. West Virginia Penitentiary 10,000.00
30 Smoke Control.

31 Item V. Marshall University 20,000.00
32 Major repairs to Fairfield Stadium.

33 Item VI. State Board of Education—Rehabilitation Division 125,000.00
35 Sheltered Workshop.

36 Item VII. State Board of Education—Rehabilitation Division 400,000.00
38 Rehabilitation Service Building.

39 Item VIII. The Board of Public Works 200,000.00
40 For major repairs to Capitol Buildings, in-
Ch. 12] APPROPRIATIONS

41 including heating, plumbing and electrical
equipment.

43 Item IX. Department of Agriculture .......... 50,000.00
44 Soil Conservation Committee for water-
shed development.

46 Item X. Department of Commerce .......... 500,000.00
47 Construction and operation of 1964 New
48 York World's Fair Building.

49 The above items shall be released in the
50 priority listed and shall be released prior
51 to the items listed hereafter.

52 Item XI. General School Fund for Instruction-
53 tional Aids and Library Books .......... 450,000.00
54 For transfer to the general school fund to
55 be allocated to each county at the rate of
56 one dollar per net enrolled pupil, said
57 amount to be allocated to each school in
58 the county on the net enrollment basis and
59 to be expended for instructional aids and/
60 or library books.

61 Item XII. Department of Mental Health ...... 150,000.00
62 For purchase of drugs for distribution to
63 mental institutions under their control.

64 Item XIII. Centennial Commission ............ 260,000.00
65 To be transferred to "West Virginia Cen-
66 tennial Fund."

67 Out of the above appropriation an amount
68 not to exceed $5,000.00 shall be spent for
69 celebration of the Emancipation Procla-
70 mation, and the sum of $10,000.00 shall
71 be expended for the West Virginia State
72 Fair.

73 Item XIV. Department of Commerce .......... 600,000.00
74 Industrial Development Fund — to be
75 transferred to Special Revenue Account,
76 "Industrial Development Loans."
77 Item XV. Department of Civil and Defense
78 Mobilization ...................................... 18,725.00
79 For communication and warning system.

80 Item XVI. West Virginia Geological Survey 2,500.00
81 To purchase and erect suitable markers
82 designating boundary lines between the
83 state of West Virginia and Virginia as set
84 forth in chapter twenty-six, acts of the
85 Legislature, regular session, 1959.

86 Item XVII. West Virginia Institute of Technology 150,000.00
87 Land purchases and aid in dormitory con-
88 struction and equipment.

90 Item XVIII. West Virginia Children’s Home 20,000.00
91 For repairs to electrical and mechanical
92 systems.

93 Item XIX. Weston State Hospital 80,000.00
94 Renovate Soldiers’ Home ........ 50,000.00
95 Repair to Bakery .................. 30,000.00

96 Item XX. Spencer State Hospital 20,000.00
97 For roof repairs.

98 Item XXI. West Virginia Training School 40,000.00
99 To purchase kitchen equipment.

100 Item XXII. Barboursville State Hospital 40,000.00
101 To purchase equipment for building dam-
102 aged by fire and for fire escape equipment
103 improvements.

104 Item XXIII. Denmar State Hospital 35,000.00
105 To construct inmate barracks.

106 Item XXIV. Andrew S. Rowan Memorial 20,000.00
107 Home ........................................ 20,000.00
108 For repairs to spring and bath house
109 building.

110 Item XXV. Hopemont Sanitarium ................. 31,500.00
111 For repairs and alterations to Security
112 Building and storm windows and screens for main building.

114 Item XXVI. Pinecrest Sanitarium .......................... 33,550.00
115 For elevator repairs and repairs to electrical and plumbing system.

117 Item XXVII. Department of Commerce .............. 35,000.00
118 For restoration and renovation of General Adam Stephan Memorial.

120 Item XXVIII. West Virginia State College .... 123,000.00
121 Land purchase and relocation of athletic field.

123 Item XXIX. West Virginia University .............. 100,000.00
124 Land Acquisition.

125 Item XXX. Glenville State College .............. 18,000.00
126 Land Purchase.

127 Item XXXI. Department of Mines .................. 25,000.00
128 For reproducing assessment and equalization maps.

130 Item XXXII. Concord College ...................... 30,000.00
131 Land Purchase.

132 Item XXXIII. Potomac State College .............. 25,000.00
133 To construct maintenance building.

134 Item XXXIV. Natural Resources Commission—Parks  .... 900,000.00

136 The above appropriation shall be expended for improvements and construction on Natural Resources properties and facilities, including land acquisition and impoundments.

141 Out of the above appropriation, $20,000.00 shall be used for mine sealing, back filling and reclamation of abandoned mine operations in Preston County, vicinity of Crel- lin, Maryland.
Item XXXV. West Virginia Penitentiary

This shall be used for South Wing Cell Block.

Item XXXVI. Department of Labor

Construction of two calibration stations.

Item XXXVII. State Office Building Commission

Land acquisition, paving of parking area, plans and specifications for new office building.

Item XXXVIII. State Armory Board

Paving and grounds improvements at Nathan Goff Armory.

Item XXXIX. Forestry Camp for Boys

Construct shop facilities.

Item XL. Marshall University

Land Acquisition.

Sec. 5. Special Revenue Appropriations.—There is hereby appropriated for expenditure during the fiscal year one thousand nine hundred sixty-four appropriations made by general law from special revenue which are not paid into the state fund as general revenue under the provisions of section two, article two, chapter twelve of the Code of West Virginia, one thousand nine hundred thirty-one: Provided, however, That none of the moneys so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of articles two and three, of chapter twelve, Code of West Virginia and chapter one hundred and thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-one, and unless the spending unit has filed with the state director of the budget and the state auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues accruing to such fund;

(b) A detailed expenditure schedule showing for what purposes the fund is to be expended.
Sec. 6. Specific Funds and Collection Accounts.—A fund or collection account, which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account, and shall be expended according to the provisions of article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one.

There is hereby appropriated to Marshall University the sum of $4,699.13 representing interest earned on construction funds in the hands of the State Sinking Fund Commission, for the purpose of purchasing equipment and the renovation of existing facilities at the Marshall University Heights property.

There is hereby appropriated to Marshall University the sum of $62,650.00 representing an award for damages to the Marshall University Heights property for right-of-way of I-64 through said property, said funds being presently in the hands of the State Road Commission, for the purpose of improving the buildings and grounds of the Marshall University property.

Sec. 7. Appropriations for Refunding Erroneous Payments.—Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid for refund to the proper person.

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

Sec. 8. Sinking Fund Deficiencies.—There is hereby appropriated to the Board of Public Works a sufficient amount to meet a deficiency that may arise in the funds of the state sinking fund commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest
and sinking fund requirements. The Board of Public Works is authorized to transfer from time to time such amounts to the State Sinking Fund Commission as may be necessary for this purpose.

The State Sinking Fund Commission shall reimburse the State of West Virginia through the Board of Public Works from the first remittance collected from any state agency or local taxing district for which the Board of Public Works advanced funds, with interest at the rate carried by the bonds for which the advance was made.

Sec. 9. Appropriations from Taxes and License Fees.—There is hereby appropriated from the cigarette tax for administration and enforcement of the law relating to said tax a sum not to exceed one and one-half per cent of the tax collected or stamps sold. There is hereby appropriated from the soft drink tax revenues for administration and enforcement of the law relating to said tax, a sum not to exceed two and one-half per cent of the total revenues collected. All such salaries and expenses, authorized by law as aforesaid, shall be paid by the Tax Commissioner through the state treasurer out of gross collections.

Sec. 10. Appropriations to Pay Costs of Publication of Delinquent Corporations.—There is hereby appropriated out of state fund, general revenue, out of funds not otherwise appropriated to be paid upon requisition of the auditor and/or the governor, as the case may be, a sum sufficient to pay the cost of publication of delinquent corporations as provided by sections seventy-five and seventy-seven of article twelve, chapter eleven, Code of West Virginia.

Sec. 11. 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.

(a) For the redemption of lands;
(b) By public service corporations;
(c) For tax forfeitures.
Sec. 12. Total Appropriations.—Where only a total sum 2 is appropriated to a spending unit that total sum shall in-3 clude personal services, current expenses, and capital out-4 lay, except as otherwise provided in Title I, Section 3.

Sec. 13. General School Fund.—The balance of the pro-2 ceeds of the general school fund remaining after the pay-3 ment of the appropriations made by this act is appropri-4 ated for expenditure in accordance with section six, article 5 nine, chapter eighteen of the Code of West Virginia, one 6 thousand nine hundred thirty-one, as amended.

Title 3. Administration.

Section
1. Appropriations conditional.
2. Constitutionality.

Section 1. Appropriations Conditional.—The expenditure 2 of the appropriations made by this act, except those ap-3 propriations made to the legislative and judicial branches 4 of the state government, are conditioned upon the compli-5 ance by the spending unit with the requirements of article 6 five, chapter five, of the Code of West Virginia, one thou-7 sand nine hundred thirty-one, as amended by chapter one 8 hundred thirty-two, acts of the Legislature, regular session, 9 one thousand nine hundred sixty-one.

10 Where former spending units have been absorbed by or 11 combined with other spending units by acts of this legis-12 lature, it is the intent of this act that reappropriations shall 13 be to the succeeding or later spending unit created unless 14 otherwise indicated.

Sec. 2. 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.
AN ACT to amend article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, to be designated section eighteen, relating to the preparation of a digest of the budget bill.

Be it enacted by the Legislature of West Virginia:

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

Article 1. Officers, Members and Employees; Appropriations; Investigations; Display of Flag; Records.

Section 18. Legislature to Prepare Digest of Budget Bill.—The Legislature, acting by its appropriate committees, shall consider the budget bill, the budget document and matters relating thereto, and following such consideration and upon the passage of the budget bill by the Legislature, the Legislature shall prepare a digest or summary of the budget bill containing detailed information similar to that included in the budget document submitted to the Legislature by the board of public works but including amendments of legislative committees, and as finally enacted by the Legislature. Such digest or summary shall be prepared at the direction of and approved by members of the conferees committee on the budget and shall be included in the journals of the Legislature or printed as a separate document, and copies shall be furnished to the board of public works, commissioner of finance and administration, and the various state spending units for such use as may be deemed proper.
AN ACT to amend and reenact section eleven, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to itemization of tentative budget.

Be it enacted by the Legislature of West Virginia:

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

Article 2. Budget Division.

Section 11. Itemization of tentative budget.

Section 11. Itemization of Tentative Budget.—The tentative budget submitted by the commissioner shall itemize appropriations separately for:

1. “Personal services” which shall mean salaries, wages, fees and other compensation for skill, work or employment: Provided, however, That the total expenditure shown for personal services shall reflect the actual expenditure for each line item under this classification;

2. “Current expenses” which shall mean operating costs other than personal services, and shall not include equipment, repairs and alterations, buildings, or lands;

3. “Equipment” which shall mean equipment items which have an appreciable and calculable period of usefulness in excess of one year;

4. “Repairs and alterations” which shall mean repairs to structures and improvements to property which do not increase the capital asset;

5. “Buildings” which shall include construction and alteration of structures and the improvement of lands and shall include shelter, support, storage, protection, or the improvement of a natural condition; and
(6) “Lands” which shall mean the purchase of real property or interests in real property.

A spending unit or other person requesting an appropriation may submit a different itemization with the prior approval of the commissioner, if the uniform itemization does not apply.

CHAPTER 15

(Senate Bill No. 66—By Mr. McKown)

(Passed February 18, 1963; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section two, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers and duties of the state historian and archivist.

Be it enacted by the Legislature of West Virginia:

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

Article 1. Department of Archives and History.

Section

2. State historian and archivist; duties; annual report; acceptance of gifts, donations, contributions, bequests or devises.

Section 2. State Historian and Archivist; Duties; Annual Report; Acceptance of Gifts, Donations, Contributions, Bequests or Devises.—The department shall be in charge of a person who shall be appointed by the governor for a term of four years, and who shall be known as the state historian and archivist. He shall be the custodian of the collections of this department and it shall be his duty to carry into operation and full effect the provisions of section one of this article. He shall have power and authority to adopt and establish such by-laws and regulations for its government as may seem necessary...
and proper to effect the objects of the department, subject in all matters, however, to the approval of the governor; and he shall cause to be enforced such library rules and regulations as will aid students, readers, investigators and research workers in the use of the material of the department and in the proper protection thereof. He shall employ the necessary clerical assistants and make rules and regulations for their government. He shall arrange for the publication of such matter as the Legislature may from time to time provide for printing, including the editing and publishing of a quarterly historical magazine devoted to the history, biography, bibliography and genealogy of West Virginia. He shall cause the rooms of the department to be kept open to the public daily, except Sunday, from nine o'clock in the morning until five o'clock in the afternoon, throughout the year; and upon the request of the president of the senate or the speaker of the house of delegates, from seven o'clock until nine o'clock in the evening during the sessions of the Legislature. He shall make annually a report to the governor to be transmitted by him to the Legislature, which report shall contain a list of all the state's papers, public documents, books, pamphlets, and other property belonging to the department, not theretofore published, also a statement of its annual accumulations, and a statement of the receipts and expenditures, accompanied by such recommendations as he deems best for the state's interests in said department.

It shall be the duty of each state official in the executive department of the state, board, commission and agency of the state, and the president or superintendent of each state institution to furnish the department of archives and history with a sufficient number of all state papers, public records, reports, documents and pamphlets, printed by the respective official, board, commission, agency and institution at state expense, to supply the library of every state institution of higher learning with two copies of each such publication. The state historian and archivist shall cause two copies of each such publication to be sent to each state institution of higher learning to be deposited in the library thereof.
The department of archives and history shall be authorized and empowered, acting through the state historian and archivist and with the consent of the governor, to accept and receive gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, or any interest in such property, necessary and proper to effectuate the objective of the department, and said department may accept and receive same subject to any terms, limitations or restrictions placed thereupon by the donor.

CHAPTER 16

(Com. Sub. for House Bill No. 105—Originating In the House Committee on the Judiciary)

AN ACT to amend and reenact section seventy-nine-a, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to activities of foreign corporations and Massachusetts trusts which do not constitute doing business in this state.

Be it enacted by the Legislature of West Virginia:

That section seventy-nine-a, 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:

Article 1. Provisions Relating to Corporations Generally

Section 79-a. Foreign corporations acquiring secured loans on real or personal property not doing business.

Section 79-a. Foreign Corporations Acquiring Secured Loans on Real or Personal Property Not Doing Business.

The carrying on in this state of any one or more of the following activities by a foreign corporation (including a Massachusetts trust, and any other type of association treated as a corporation by other provisions of this code),
shall not constitute doing business in this state within the meaning of the preceding section or any other statute, except the provisions of section seventy-one of this article relating to service of process on foreign corporations which do not qualify to do business in this state: (a) the acquisition by purchase of loans secured by mortgages or deeds of trust, drawn and executed in compliance with chapter thirty-eight, article one-a, section two, of this code on real or personal property situated in West Virginia pursuant to commitment agreements or arrangements made prior to or following the origination or creation of said loans; (b) the ownership, modification, renewal, extension, transfer or foreclosure of such loans, or the acceptance of substitute or additional obligors thereon; (c) the maintaining or defending of any actions or suits relative to such loans, mortgages or deeds of trust; (d) the maintenance of bank accounts in West Virginia banks in connection with the collection or servicing of such loans; (e) the making, collection and servicing of such loans through a resident person, firm or corporation, or a foreign corporation qualified to do business in West Virginia, engaged in the business of servicing loans for investors; (f) the taking of deeds to the mortgaged property either in lieu of foreclosure or for the purpose of transferring title either to the federal housing administration or to the veterans administration as the insurer or guarantor; (g) the acquisition of title to property under foreclosure sale or from the owner in lieu of foreclosure; (h) the management, rental, maintenance and sale, or the operating, maintaining, renting or otherwise dealing with, selling or disposing of property acquired under foreclosure sale or by agreement in lieu thereof; (i) physical inspection and appraisal of property in West Virginia as security for deeds of trust or mortgages and negotiations for the purchase of such loans; (j) any other transaction directly related to the activities above described: Provided, however, That if property acquired in or by reason of any of the activities defined in the provisions of (f), (g) and (h) hereof shall be held longer than a period of five years, the provisions of this section shall thereafter be inapplicable.
AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-e, relating to banking institutions.

Be it enacted by the Legislature of West Virginia:

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

Article 4-e. Bank Service Corporations and Bank Services.

Section 1. Definitions.—“Bank services” shall be construed to mean services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a banking institution or a national banking association. “Bank service corporation” shall be construed to mean a corporation organized under the laws of this state to perform bank services for two or more banking institutions chartered under this chapter and authorized to do business in this state (hereinafter referred to in this article as “banking institutions”), or one or more such institutions and one or more national banking associations, each of which owns part of the capital stock of such corporation. “Invest” shall be construed to mean any advance of funds to a bank
service corporation, whether by the purchase of stock, the making of a loan, or otherwise, except the payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment.

Sec. 2. Investment in Bank Service Corporations by Banking Institutions Authorized.—Notwithstanding any other provision of law, any banking institution is hereby authorized to invest not more than ten per cent of its paid-in and unimpaired capital and unimpaired surplus in a bank service corporation. If stock in a bank service corporation has been held by two banking institutions, or by one such institution and one national banking association and one banking institution or such association ceases to utilize the services of the corporation and ceases to hold stock in it, and leaves a banking institution as the sole stockholder, the bank service corporation may nevertheless continue to function as such and such banking institution may continue to hold stock in such corporation.

Sec. 3. Extension of Bank Services to Other Banking Institutions and National Banking Associations.—Whenever a banking institution or a national banking association applies for bank services for itself (hereinafter referred to in this section as “an applying bank”) from a bank service corporation which supplies the same type of bank services to one or more other banking institutions or national banking associations, or both, and the applying bank is competitive with any banking institution or national banking association which holds stock in such corporation (referred to in this section as a “stockholding bank”), the corporation must offer to supply such services by either:

(a) Issuing stock to the applying bank and furnishing banking services to it on the same basis as to the stockholding banks, or

(b) Furnishing bank services to the applying bank at rates no higher than necessary to reflect fairly the cost of such services, including the reasonable cost of the capital provided to the corporation by the stockholding banks, at the corporation’s option, unless comparable services at competitive overall costs are available to the
applying bank from another source, or unless the furnish-
ing of the services sought by the applying bank would
be beyond the practical capacity of the bank service
corporation. In any action or proceeding to enforce the
duty imposed by this section or for damages for the
breach thereof, the burden shall be upon the bank service
corporation to show such availability.

Sec. 4. Limitation on Activities of Bank Service
Corporations. — No bank service corporation may engage
in any activity other than the performance of bank
services for banking institutions or national banking
associations, or both.

Sec. 5. Regulation and Examination of Parties Per-
forming Bank Services.— No banking institution chartered
under this chapter and authorized to do business in this
state may cause to be performed, by contract or other-
wise, any bank services for itself, whether on or off its
premises, unless written assurances satisfactory to the
commissioner of banking are furnished to him by both
the banking institution and the party performing such
services that the performance thereof will be subject to
regulation and examination by the department of bank-
ing and any federal supervisory agency to the same
extent as if such services were being performed by the
banking institution on its own premises.

CHAPTER 18
(House Bill No. 50—By Mr. Ford)

[Passed February 11, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article
six, chapter thirty-one of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to building and loan associations and the conditions and
circumstances under which such associations may take
mortgages and deeds of trust.
Be it enacted by the Legislature of West Virginia:

That section twenty-one, article six, 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 21. Conditions on which association may take mortgage or deed of trust.

Section 21. Conditions on Which Association May Take Mortgage or Deed of Trust.—No building and loan association shall:

First: Take a mortgage or deed of trust upon real estate unless a written application is first made for the loan described in such mortgage or deed of trust, showing the date, name of applicant, amount of loan desired, description of the real estate offered, and other information necessary, and unless a written report thereon shall have been made by at least two members of the appraisal committee, signed by them, stating that they have examined the real estate described in such application and in their judgment it affords adequate security for such loan. Such report shall show separately the value of the land and the value of the improvements and of the building or buildings erected thereon. The application and the report shall be filed and preserved with all the other papers relating to the loan.

Second: Take a mortgage or deed of trust upon improved real estate if the amount secured by such mortgage or deed of trust, plus any prior liens, exceeds ninety per centum of the appraised value thereof as shown by such report, unless said excess be secured by a pledge of free stock or notes of the association, or unless said excess is insured or guaranteed by the United States or any instrumentality thereof, or there is a commitment to so insure or guarantee. No loan shall be made on the security of vacant real estate if the amount so secured, plus any prior liens, exceed fifty per centum of the appraised value thereof as shown by such report.

Third: Take a mortgage or deed of trust upon real estate unless the title to such real estate is approved by
AN ACT to amend and reenact sections one, eighteen, nineteen, twenty, twenty-four, twenty-six and twenty-seven, article ten, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article and chapter by adding thereto eight new sections, designated sections twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four and thirty-five, all relating to the incorporation, organization and operation of a cooperative, nonprofit credit union.

Be it enacted by the Legislature of West Virginia:

That sections one, eighteen, nineteen, twenty, twenty-four, twenty-six, and twenty-seven, article ten, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article and chapter be further amended by adding thereto eight new sections, designated sections twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four and thirty-five, all to read as follows:

Article 10. Credit Unions.

Section

1. Credit unions, definition and purpose; who may form; agreement; by-laws, charter, approval by commissioner of banking, filing, certificate of authority; form of incorporation and by-laws prescribed by commissioner of banking.

18. Investment of capital, undivided profits and reserve funds.

19. Security for loans to members; application for loan by member of credit committee; illegal to loan to nonmembers.

20. Reserve fund, of what constituted; increase or decrease.

24. Dissolution.

Section 1. Credit Unions, Definition and Purpose; Who May Form; Agreement; By-Laws, Charter, Approval by Commissioner of Banking, Filing, Certificate of Authority; Form of Incorporation and By-Laws Prescribed by Commissioner of Banking.—A credit union is hereby defined as a cooperative, nonprofit association, incorporated in accordance with the provisions of this article for the purpose of creating a source of credit at a fair and reasonable rate of interest, of encouraging habits of thrift among its members and of providing the opportunity for people to use and control their money for their mutual benefit.

Any eight persons, residents of the state of West Virginia and having a common bond of occupation or association, may apply to the secretary of state for permission to organize a credit union. A credit union shall be organized in the following manner:

(a) The applicants shall execute in duplicate an incorporation agreement by the terms of which they agree to be bound. The agreement shall state:

(1) The name of the proposed credit union which shall include the words “credit union” and which shall not be the same as that of any other existing credit union;

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

(3) The names and post office addresses of the incorporators, and the number of shares subscribed by each;

(4) The total number of shares of stock which the credit union shall have authority to issue and the par value of each share, which par value shall not exceed ten dollars.
(b) The applicants shall then prepare and adopt by-laws for the general government of the credit union consistent with the provisions of this article and execute the same in duplicate. The by-laws shall specify:

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

2. The number of directors, which shall be not less than five, all of whom must be shareholders and members of the credit union, their powers and duties; and the compensation and duties of all officers;

3. The conditions and qualifications for membership;

4. The number of members of the credit committee and of the supervisory committee, with their respective powers and duties;

5. The conditions upon which shares may be issued, transferred and withdrawn;

6. The charges, if any, to be made for failure to meet obligations punctually;

7. The conditions upon which deposits may be received and withdrawn, and whether the credit union shall have the power to borrow;

8. The manner in which the funds of the credit union shall be invested;

9. The conditions upon which loans may be made and repaid;

10. The method of receipting for money paid in on account of shares, deposits and loans;

11. The manner in which the reserve fund shall be accumulated;

12. The manner in which dividends shall be determined and paid out.

(c) The agreement and by-laws, both executed in duplicate, shall be forwarded to the secretary of state.

(d) The secretary of state, within thirty days after the receipt of such agreement, shall determine whether it conforms to the provisions of this article, and whether
or not the organization of the credit union in question would benefit the organizers of it, and be consistent with the purposes of this article.

(e) Thereupon the secretary of state shall notify the applicants of his decision. If it is favorable, he shall issue a charter, attach the charter to the duplicate of the agreement and return the same, together with the duplicate of the by-laws to the applicants: Provided, That the secretary of state shall issue no charter to any credit union to do business in this state until such incorporation agreement and by-laws have been approved in writing by the commissioner of banking.

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

(g) When any credit union authorized by this article desires to begin business, it must notify the commissioner of banking, who shall at his earliest convenience make an examination of its affairs. Having satisfied himself that all the conditions precedent have in good faith been complied with, said commissioner shall then issue to such credit union, under his hand, and official seal, a certificate of authority reciting that such examination has been made and that the credit union is authorized to commence business which certificate shall be displayed in the business place of such credit union. But the commissioner may withhold from any credit union his certificate authorizing the commencement of business whenever he has reason to suppose that the members have formed the same for any other than the legitimate objects contemplated in this article.

In order to simplify the organization of credit unions, the commissioner of banking shall cause to be prepared an approved form of incorporation agreement and form of by-laws consistent with this article, which may be used by credit union incorporators.

Sec. 18. Investment of Capital, Undivided Profits and Reserve Funds.—The capital deposits, undivided profits
and reserve funds of the corporation may be invested in
the following ways, and in such ways only:
(a) Loaned to members of the corporation in accord-
ance with the provisions of this article;
(b) Deposited to the credit of the corporation in a
banking institution incorporated under the laws of this
state, or in national banks operating in this state;
(c) In obligations of the United States of America,
or in securities fully guaranteed thereby as to both prin-
cipal and interest or in shares or accounts of federal
savings and loan associations; and
(d) In any investment legal for banking institutions
or trust funds in this jurisdiction.

Sec. 19. Security for Loans to Members; Application
for Loan by Member of Credit Committee; Illegal to Loan
to Nonmembers.—As provided in section eighteen of this
article, a credit union may loan to its members for such
purposes and upon such security and terms as the by-
laws shall provide and the credit committee shall approve;
but security must be taken for any loan in excess of seven
hundred fifty dollars. Endorsements of a note or assign-
ment of shares in any credit union shall be deemed se-
curity within the meaning of this section.

A member who needs funds with which to purchase
necessary supplies for growing crops may receive a loan
in fixed monthly installments instead of in one sum.
If any member of the credit committee makes applica-
tion to borrow money from a credit union or becomes
surety for any other member whose application for a
loan is under consideration, the supervisory committee
shall appoint a substitute to act on the credit committee
in the place of such member, during the consideration of
such application. All officers and members of any com-
mittee in any way knowingly permitting or participating
in making a loan of funds of a credit union to a non-
member thereof shall be guilty of a misdemeanor. The
credit union shall have the right to recover the amount
of any such illegal loan from the borrower or from any
officer or member of a committee who knowingly com-
mitted or participated in the making thereof, or from all
of them jointly.

A borrower may repay the whole or any part of his
loan on any day on which the office of the corporation is
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 re-
serve fund of the corporation. At the close of each fiscal
year there shall be set apart to the reserve fund twenty
per cent of the net income of the corporation which has
accumulated during the year. But upon the recommend-
dation 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 propor-
tion of profits which is required by this section to be set
apart to the reserve fund.

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

Sec. 24. Dissolution.—(a) Voluntary—At a meeting
especially called to consider the matter, a majority of
the entire membership may vote to dissolve the credit
union, provided a copy of the notice was mailed to the
commissioner of banking at least ten days prior thereto.
Any member not present at such meeting may, within
the next twenty days vote in favor of dissolution by
signing a statement in form approved by the commis-
sioner of banking and such vote shall have the same
force and effect as if cast at such meeting. The credit
union, with the prior approval of the commissioner of
banking, shall thereupon immediately cease to do business
except for the purposes of liquidation, and the president
and secretary shall, within five days following such
meeting, notify the commissioner of banking of inten-
tion to liquidate and shall include a list of the names of
the directors and officers of the credit union together
with their addresses.
(b) **Involuntary**—If it shall appear that any credit union is bankrupt or insolvent, or that it has violated any of the provisions of this article, the commissioner of banking may, after holding a hearing or giving adequate opportunity for a hearing, order such credit union to correct such condition and shall grant it not less than sixty days within which to comply, and failure to do so shall afford the commissioner of banking grounds for revocation of the certificate of approval and charter and for appointment of a receiver or for applying to the appropriate court of the jurisdiction in which such credit union is located for the appointment of a receiver to close the affairs of such credit union.

(c) **Liquidating Procedures**—The credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted and wound up, for three years.

The board of directors shall, or in the case of involuntary dissolution, the receiver shall, use the assets of the credit union to pay; first, expenses incidental to liquidation including any surety bond that may be required; second, any liability due non-members; third, deposits and savings club accounts, such as Christmas club, vacation clubs and other such thrift organizations within the membership. Assets then remaining, if any, shall be distributed to the members proportionately to the shares held by each member as of the date dissolution was voted or ordered.

As soon as the board or the receiver determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, a certificate of dissolution shall be executed on a form prescribed by the commissioner of banking and file same with the proper recording agency within the jurisdiction wherein the credit union had its principal place of business, which shall, after recording and indexing same, forward it to the commis-
Sec. 26. Share Reduction.—Whenever the losses of any credit union, resulting from a depreciation in value of its loans or investments or otherwise, exceed its undivided earnings and reserve fund so that the estimated value of its assets is less than the total amount due the shareholders the credit union may, by a three-fourths vote of the entire membership at a meeting called to consider the matter, order a reduction in the liability of such credit union to each of its shareholders so as to divide the loss proportionately among the shareholders. If thereafter the credit union shall realize from such assets a greater amount than was fixed by the order of reduction, such excess shall be divided among the shareholders whose assets were reduced, but only to the extent of such reduction.

Sec. 27. Conversion.—A credit union chartered under state law may be converted into a federal credit union under the laws of this state by complying with the following requirements:

1. The proposition for such conversion shall first be approved, and a date set for a vote thereon by the members, (either at a meeting to be held on such date or by written ballot to be filed on or before such date), by a majority of the directors of the said credit union. Written notice of the proposition and of the date set for the vote shall then be delivered in person to each member, or mailed to each member at the address for such member appearing on the records of the credit union, not more than thirty or less than seven days prior to such date. Approval of the proposition for conversion shall be by the affirmative vote of two thirds of the members, in person or in writing.

2. A statement of the results of the vote, verified by the affidavits of the president or vice president and the secretary, shall be filed with the commissioner of banking within ten days after the vote is taken.

3. Promptly after the vote is taken and in no event later than ninety days thereafter, if the proposition for
conversion was approved by such vote, the credit union shall take such action as may be necessary under the applicable federal law to make it a federal credit union, and within ten days after receipt of the federal credit union charter there shall be filed with the commissioner of banking a copy of the charter thus issued. Upon such filing the credit union shall cease to be a credit union governed by state law.

(4) Upon ceasing to be a credit union chartered under state law, such credit union shall no longer be subject to any of the provisions of this article. The successor federal credit union shall be vested with all the assets and shall continue responsible for all of the obligations of the state credit union to the same extent as though the conversion had not taken place.

Sec. 28. Merger.—Any credit union may, with the approval of the commissioner of banking, merge with another credit union, provided the membership of the one credit union is within the field of membership of the other, under the existing charter of such other credit union, pursuant to any plan agreed upon by the majority of the board of directors of each credit union joining in the merger, and approved by the affirmative vote of two thirds of the members of each such credit union, either at meetings of the membership duly called for such purpose or in writing. After such agreement by the directors and approval by the members of each credit union the president and secretary of each credit union shall execute in duplicate, a certificate of merger, which shall set forth all of the following:

(a) The time and place of the meeting of the board of directors at which the plan was agreed upon;
(b) The vote in favor of adoption of the plan;
(c) A copy of the resolution or other action by which the plan was agreed upon;
(d) The time and place of the meeting of the members at which the plan agreed upon was approved;
(e) The vote by which the plan was approved by the members;
25 (f) The date the merger was approved by the commis-
26 sioner of banking.
27 Such certificates, in duplicate, and a copy of the plan of
28 merger agreed upon shall be forwarded to the commis-
29 sioner of banking, and a copy of the certificate certified by
30 him, shall be returned to the merging credit unions within
31 thirty days.
32 Upon any such merger so effected, all property, prop-
33 erty rights, and interest of the merged credit union shall
34 vest in the surviving credit union without deed, endorse-
35 ment or other instrument of transfer, and all debts, ob-
36 ligations and liabilities of the merged credit union shall
37 be deemed to have been assumed by the surviving credit
38 union under whose charter the merger was effected.
39 This section shall be construed, whenever possible, to
40 permit a credit union chartered under any other act to
41 merge with one chartered under this article, or to permit
42 one chartered under this article to merge with one char-
43 tered under any other act.

Sec. 29. Penalty for Violation of Article.—Any viola-
2 tion of this article shall be deemed a misdemeanor and
3 any person convicted thereof shall be fined not less than
4 one hundred nor more than five hundred dollars and
5 imprisoned in the county jail not less than one month
6 nor more than six months.

Sec. 30. Records.—All records of a credit union incor-
2 porated under this article shall be kept for a period of
3 six years from the date of making same or from the date
4 of the last entry thereon. No credit union shall be re-
5 quired to receipt for payment except as may be provided
6 in the by-laws, nor shall it be necessary to endorse a
7 note showing date or balance due.

Sec. 31. Audits.—The commissioner of banking shall
2 examine or cause to be examined each credit union
3 annually. Each credit union and all its officers and
4 agents are required to give to representatives of said
5 department free access to all books, papers, securities,
6 records and other sources of information under their con-
7 trol; and for the purpose of such examination said repre-
8 sentatives shall have power to subpoena witnesses, ad-
CORPORATIONS

Sec. 32. Spreading False Reports.—Any person, firm, corporation, or association which maliciously and knowingly spreads false reports about the management or finances of any credit union shall, upon conviction, be fined not less than twenty-five dollars nor more than two hundred dollars or be imprisoned for not less than thirty days nor more than one year, or both.

Sec. 33. Taxation.—Any credit union organized under this or any other credit union act shall be exempt from all taxation now or hereafter imposed by this jurisdiction or any municipality within this jurisdiction or any local taxing authority and no law which taxes corporations in any form, or the shares thereof, or the accumulations thereon, shall apply to any such credit union; except that any real property and any tangible personal property owned by any such credit union shall be subject to taxation to the same extent as other similar property is taxed. The shares of credit unions shall not be subject to any stock transfer tax, either when issued or when transferred from one member to another. The participation by the credit union in any unemployment insurance fund, or social security fund, or old age fund, shall not be deemed a waiver of the tax immunities hereby granted.

Sec. 34. Credit Unions Heretofore Organized Need Not Obtain New Charter; Actions Validated.—All credit unions which have been heretofore legally organized

minister oaths, compel the giving of testimony, and require the submission of documents. A report of such examination shall be submitted to the board of directors of each credit union by the examiner agent within thirty days after the completion of the examination. Said report shall contain comments relative to the management of the affairs of the credit union and also as to the general condition of its assets. This report shall be read to the members at the next annual meeting. Within thirty days of the receipt of such report, a general meeting of the directors and committeemen shall be called to consider matters contained in the report and methods of correcting exceptions.
under chapter thirty-six of the acts of the Legislature of
one thousand nine hundred twenty-five and which are in
existence on the effective date of this section; and all
credit unions which have been heretofore legally organ-
ized under article ten of chapter thirty-one of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended, and which are in existence on the effective
date of this section, shall upon the effective date of this
section be considered to have been organized under the
provisions of this article, and shall not be required to
obtain a new charter or to reorganize hereunder. All acts
and things done by any such credit unions, insofar as
such acts and things shall not have constituted any viola-
tion of law as it shall heretofore have existed, shall be
deemed valid and effective.

Sec. 35. Validity.—All laws or parts of laws in conflict
with the provisions of this article are hereby repealed to
the extent of such conflict. The invalidity of any section,
or part thereof, shall not affect or render the remainder
of this article invalid or inoperative.

CHAPTER 20

(Senate Bill No. 226—By Mr. Carson, Mr. President)

[Passed March 1, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article fifteen,
chapter thirty-one of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to the
definition of terms used in said article which establishes
and provides for the West Virginia industrial development
authority, and particularly redefining the terms “industrial
development agency” and “industrial development proj-
ect.”

Be it enacted by the Legislature of West Virginia:

That section four, article fifteen, 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:
Article 15. West Virginia Industrial Development Authority.

Section 4. Definitions.—The following terms, whenever used or referred to in this article, shall have the following meanings:

(a) The term “authority” shall mean the public corporation created by this article.

(b) The term “board” shall mean the governing body of the authority.

(c) The term “county” shall mean any county of this state.

(d) The term “critical economic area” shall mean the area encompassing any municipality or group of municipalities, county, group of counties or region of the state reasonably defined by the authority wherein critical conditions of unemployment, economic depression, widespread reliance on public assistance and unemployment compensation are found to exist by the authority. Prior to determination and designation of any area of the state as a critical economic area, the authority shall conduct such investigations of the area and of the records and statistical indices of the department of employment security, department of labor, department of natural resources, department of welfare and other applicable state agencies, as well as the declarations and statistics of any federal agencies as shall be necessary to establish the existence of the above conditions in such area. No area of the state shall be designated a critical economic area without such investigations and findings having been first made and certified to the permanent records of the authority.

(e) The term “federal agency” shall mean and include the United States of America, the president of the United States of America, and any department of, or corporation, agency or instrumentality heretofore or hereafter created, designated or established by, the United States of America.

(f) The term “government” shall mean the state and federal governments, or any political subdivision, agency
or instrumentality, corporate or otherwise, of either of
them.

(g) The term "industrial development agency" shall
mean any incorporated organization, foundation, associ-
ation or agency, regardless of the particular name, and to
whose members or shareholders no profit shall inure,
which shall have as its primary function the promotion,
encouragement and development of industrial, manufac-
turing and tourist facility enterprises in a critical eco-

(h) The term "industrial development fund" shall
mean the account created by section nine of this article.

(i) The term "industrial development project" shall
mean any site, structure, facility or undertaking compris-
ing or being connected with or being a part of an indus-
trial, manufacturing or tourist facility enterprise estab-
lished or to be established by an industrial development
agency in a critical economic area.

(j) The term "municipality" shall mean any city or
town of the state.

(k) The term "responsible buyer" shall mean any per-
son, partnership, firm, company or corporation organized
for profit deemed by the authority, after proper investi-
gation, to be financially responsible to assume all obliga-
tions prescribed by the authority in the acquisition of an
industrial development project from an industrial devel-

(l) The term "responsible tenant" shall mean any per-
son, partnership, firm, company or corporation organized
for profit deemed by the authority, after proper investi-
gation, to be financially responsible to assume all rental
and all other obligations prescribed by the authority in
the leasing of an industrial development project and in
the operation of an industrial or manufacturing enter-
prise therein or thereon.

(m) The words "cost of establishing an industrial de-
velopment project" shall embrace any or all of the follow-
ing: The cost of construction, the cost of all lands, prop-

erty rights, easements, and in cases of demonstrated need,
machinery and equipment, if said demonstrated need shall have been shown to the satisfaction of the authority, which are deemed necessary for such construction, financing charges, interest prior to and during construction, cost of engineering and legal expense, plans, specifications, surveys, estimates of costs and other expenses necessary or incident to determining the feasibility or practicability of any industrial development project, together with such other expenses as may be necessary or incidental to the financing and the construction of the industrial development project and the placing of the same in operation.

CHAPTER 21

(Senate Bill No. 347—By Mr. Lambert and Mr. Carrigan)

[Passed March 8, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article fifteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia industrial development authority, and loans to industrial development agencies.

Be it enacted by the Legislature of West Virginia:

That section seven, article fifteen, 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:

Article 15. West Virginia Industrial Development Authority.

Section 7. Loans to industrial development agencies.

Section 7. Loans to Industrial Development Agencies.—

2 When it has been determined by the authority upon application of an industrial development agency and upon hearing thereon in the manner hereinafter provided that the establishment of a particular industrial development project (of such industrial development agency) in a
7 critical economic area has accomplished or will accom-
8 plish the public purposes of this article, the authority
9 may contract to loan such industrial development agency
10 an amount not in excess of thirty per cent of the cost,
11 or estimated cost, of such industrial development project,
12 as established or to be established, subject, however,
13 to the following conditions.

14 (A) Industrial development projects to be established.
15 1. The authority shall have first determined that the
16 industrial development agency holds funds in an amount
17 equal to, or property of a value equal to, not less than
18 twenty per cent of the estimated cost of establishing
19 the industrial development project, which funds or prop-
20 erty are available for and shall be applied to the estab-
21 lishment of such project; and
22 2. The authority shall have also determined that the
23 industrial development agency has obtained from other
24 independent and responsible sources, such as banks and
25 insurance companies or otherwise, a firm commitment for
26 all other funds, over and above the loan of the authority
27 and such funds or property as the industrial development
28 agency may hold, necessary for payment of all the esti-
29 mated cost of establishing the industrial development
30 project, and that the sum of all these funds is adequate
31 to insure completion and operation of the industrial de-
32 velopment project.

33 (B) Industrial development projects established with
34 initial authority loan participation.
35 1. The authority shall have first determined that the
36 industrial development agency has expended funds in
37 an amount equal to, or has applied property of a value
38 equal to, not less than twenty per cent of the cost of
39 establishing the industrial development project; and
40 2. The authority shall have also determined that the
41 industrial development agency obtained from other in-
42 dependent and responsible sources, such as banks and in-
43 surance companies or otherwise, other funds necessary
44 for payment of all the cost of establishing the industrial
45 development project, and that the industrial develop-
46 ment agency participation and these funds, has been ade-
quate to insure completion and operation of the industrial development project: Provided, That the proceeds of any loan made by the authority to the industrial development agency pursuant to this subsection (B) shall be used only for the establishment of additional industrial development projects in furtherance of the public purposes of this article.

Any such loan of the authority shall be for such period of time and shall bear interest at such rate as shall be determined by the authority and shall be secured by bond of the industrial development agency and by deed of trust on the industrial development project for which such loan was made, such deed of trust to be second and subordinate only to the deed of trust securing the first lien obligation issued to secure the commitment of funds from the aforesaid independent and responsible sources and used in the financing of the industrial development project.

Moneys so loaned by the authority to industrial development agencies shall be withdrawn from the industrial development fund and paid over to the industrial development agency in such manner as shall be provided and prescribed by the rules and regulations of the authority.

All payments of interest on said loans and the principal thereof shall be deposited by the authority in the industrial development fund.

Loans by the authority to an industrial development agency for an industrial development project shall be made only in the manner and to the extent as in this section provided, except, however, in those instances wherein an agency of the federal government participates in the financing of an industrial development project by loan, grant, or otherwise, or in those instances where any bank, insurance company, lending agency, or combination thereof, participates in any industrial development project in an amount equal to sixty per cent of the cost of the project. Where any bank, insurance company, lending agency, or combination thereof, participates in an amount equal to sixty per cent of the cost of the industrial development project, the authority may adjust the
required ratios of financial participation by the local industrial development agency to an amount not less than ten per cent of the estimated cost of establishing the industrial development project. When any federal agency participates, the authority may adjust the required ratios of financial participation by the industrial development agency, the source of independent funds and the authority in such a manner as to insure the maximum benefit available to the industrial development agency, the authority, or both, by the participation of the federal agency. When ratios are adjusted in the manner set forth above, no such adjustment shall be made which shall cause the authority to grant a loan to the industrial development agency in excess of thirty per cent of the cost, or estimated cost of the industrial development project.

Where any federal agency participating in the financing of an industrial development project is not permitted to take as security for such participation a deed of trust the lien of which is junior to the deed of trust of the authority, the authority shall, in such instances, be authorized to take as security for its loan to the industrial development agency a deed of trust junior in lien to that of the federal agency.

CHAPTER 22

(Chapter 22, House Bill No. 345—By Speaker, Mr. Singleton, and Mr. Given)

(Passed March 9, 1963; in effect July 1, 1963. Approved by the Governor.)

AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen, relating to the promotion and expansion of the wood products industry in the state of West Virginia and the creation of a nonprofit corporation to be known as the West Virginia forest industries industrial foundation to allocate funds for and make secured loans
to responsible borrowers for the payment of a part of the cost of the development of the wood products industry in the state of West Virginia; authorizing the foundation to enter into agreement with the government of the United States or any federal agency or industrial development agency; empowering the foundation to take title to, sell, convey and lease wood products projects where necessary to protect loans made by the West Virginia forest industrial development fund, providing for the establishment of wood products development projects in the state of West Virginia; providing that no debt of the state, its municipalities and political subdivisions shall be incurred in the exercise of any powers granted by this act; and providing for the authorization for subscription of funds for the establishment of a forest industries industrial development fund.

Be it enacted by the Legislature of West Virginia:

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


Section
1. Short title.
2. Purposes.
3. Definitions.
4. The West Virginia forest industries industrial foundation.
7. Loan application requirements.
8. Forest industries industrial development fund.
10. Moneys of the foundation.
11. Conflict of interest.
12. Limitation of powers.
13. Audit.

Section 1. Short Title.—This article shall be known and may be cited as the “West Virginia Forest Industries Industrial Foundation Act”.

Sec. 2. Purposes.—The purposes of this article shall be to provide for the formation of a public wood products development foundation to promote, assist, encourage
and, in conjunction with such banking corporations or institutions, trust companies, savings banks, building and loan associations, insurance companies, or related corporations, partnerships, foundations, or other institutions, to develop and advance the wood products industry of the state of West Virginia; to authorize county courts and municipalities to appropriate money from their general fund for the operation and projects of the foundation; to encourage and assist in the location of new wood products business and industry; to stimulate and assist in the expansion of the wood products industry which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift and improve the standard of living of the citizens of this state; to cooperate and act in conjunction with other organizations, public or private, the objects of which are the promotion and advancement of the wood products industry in this state; to furnish money and credit to approved new and existing wood industry enterprises in this state, thereby establishing a source of credit not otherwise available therefor. Such purposes are hereby declared to be public purposes for which money of the foundation may be spent and are purposes which will promote the health, safety, morals, right to gainful employment, business opportunities and general welfare of the inhabitants of the state.

Sec. 3. Definitions.—The following terms, whenever used or referred to in this article, shall have the following meanings:

(a) The term "foundation" shall mean the nonprofit corporation created by this article.

(b) The term "board" shall mean the governing body of the foundation.

(c) The term "federal agency" shall mean and include the United States of America, the president of the United States of America, and any department of, or corporation, agency or instrumentality heretofore or hereafter created, designated or established by the United States of America.
(d) The term "government" shall mean the state and federal governments, or any political subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(e) The term "forest industries industrial development fund" shall mean the account created by section nine of this article.

(f) The term "wood industry project" shall mean any site, structure, facility or undertaking comprising or being connected with or being a part of a wood industry or wood manufacturing enterprise established or to be established in West Virginia.

(g) The term "responsible buyer" shall mean any person, partnership, firm, company or corporation organized for profit deemed by the foundation, after proper investigation, to be financially responsible to assume all obligations prescribed by the foundation in the operation of a wood industrial or wood manufacturing enterprise.

(h) The term "responsible tenant" shall mean any person, partnership, firm, company or corporation organized for profit deemed by the foundation, after proper investigation, to be financially responsible to assume all rental and all other obligations prescribed by the foundation in the leasing of a wood industry project and in the operation of a wood industrial or wood manufacturing enterprise therein or thereon.

(i) The term "responsible borrower" shall mean any person, partnership, firm, company or corporation organized for profit deemed by the foundation, after proper investigation, to be financially responsible to assume all obligations prescribed by the foundation in the loan of funds for the operation of a wood industrial or wood manufacturing enterprise by said responsible borrower.

Sec. 4. The West Virginia Forest Industries Industrial Foundation.—There is hereby created a body corporate and politic, constituting a nonprofit corporation and government instrumentality by the name of "The West Virginia Forest Industries Industrial Foundation," the board of members of which shall be appointed by the gov-
The members of the foundation initially appointed by the governor shall continue in office for terms of one to five years, respectively, from the date of their appointment and until their successors shall be duly appointed and qualified, the term of each appointed member to be designated by the governor at the time of his appointment; but their successors shall each be appointed for a term of five years, except that any person appointed to fill a vacancy shall serve only for the unexpired term, and any appointed member of the foundation shall be eligible for reappointment. Said members of the foundation shall not be entitled to compensation for their services as members, but shall be entitled to reimbursement for all necessary expenses incurred in connection with the performance of their duties as members.

Sec. 5. Powers of Foundation.—The foundation, as a public corporation, is hereby granted and shall have and may exercise all powers necessary or appropriate to carry out and effectuate the purposes of this article, including the following powers, in addition to others herein granted:

(a) To cooperate with industrial development agencies in their efforts to promote the expansion of wood industrial and manufacturing activity in the state;

(b) To determine, whether the declared public purpose of this article has been accomplished or will be accomplished by making a loan of money, sale or lease to a responsible borrower, buyer or tenant;

(c) To make, upon proper application of a responsible borrower, loans to such responsible borrower of moneys held in the forest industries industrial development fund for wood industry projects and to provide for the repayment and redeposit of such allocations and loans and to purchase shares of stock of the company of the responsible borrower or any notes receivable of said responsible buyer;

(d) To have existence for a term of fifty years;
(e) To sue and be sued, implead and be impleaded, complain and defend in all courts;
(f) To adopt, use and alter at will a corporate seal;
(g) To make by-laws for the management and regulation of its affairs;
(h) To appoint officers, agents, employees and servants, including persons qualified to grade lumber in accordance with specifications of the United States government;
(i) To make contracts of every name and nature and to execute all instruments necessary or convenient for carrying on its business;
(j) Without limitation of the foregoing, accept grants from and enter into contracts or other transactions with any federal or state agency, county court or municipality;
(k) To take title by foreclosure to any wood industry project where such acquisition is necessary to protect any loan previously made therefor by the foundation and to sell, transfer and convey any such project to any responsible buyer; in the event of sale, if transfer and conveyance cannot be effected with reasonable promptness, the foundation may, in order to minimize financial losses and sustain employment, lease such project to a responsible tenant or tenants; the foundation shall not lease such project except under the conditions and for the purposes cited in this section: Provided, however, That the foundation shall have no power at any time to borrow money or in any manner to pledge the credit or taxing power of the state or any of its municipalities or political subdivisions, nor shall any of its obligations be deemed to be obligations of the state or any of its political subdivisions.

Sec. 6. Loans.—When it has been determined by the foundation upon application of a responsible borrower that the establishment of a particular wood industry project has accomplished or will accomplish the public purposes of this article, the foundation may contract to loan all or part of the funds requested, provided that such loans shall be made within the scope of the by-laws, rules and regulations of the foundation.
Sec. 7. Loan Application Requirements.—Prior to the loaning of any funds to a responsible borrower for a wood products project, the foundation shall receive from such borrower a loan application in form adopted by the foundation the provisions of which shall be determined by the board.

Sec. 8. Forest Industries Industrial Development Fund.—The foundation shall set up an account in a bank authorized to do business in the state of West Virginia to be known as the forest industries industrial development fund to which shall be accredited proceeds from all subscriptions, donations, and other receipts from whatever source derived.

The foundation shall requisition from the forest industries industrial development fund such amounts as may be necessary to provide adequate funds for the payment of the administration of the purposes of this article.

Sec. 9. Governing Body.—The powers of the foundation shall be exercised by a governing body consisting of the members of the foundation acting as a board. Within ninety days after this article shall become effective the board shall meet and organize. The board shall elect a chairman, secretary and treasurer from their number and at the first meeting in each year thereafter they shall elect from their number a chairman, secretary and treasurer.

A majority of the members shall constitute a quorum of the board for the purpose of organizing the foundation and conducting the business thereof. The first order of business of the board shall be the drafting of the by-laws, rules and regulations of the foundation and the approval thereof by the office of the attorney general of the state of West Virginia.

Except in the instance of loan applications, all action may be taken by a vote of a majority of the members present, unless in any case the by-laws shall require a larger number; approval or rejection of loan applications shall be by a majority vote of the full membership of the board.

The board thereafter shall have full authority to man-
age the properties and business of the foundation, and
to prescribe, amend and repeal by-laws, rules and regu-
lations governing the manner in which the business of
the foundation may be conducted, and the powers granted
to it may be exercised and embodied.

Sec. 10. Moneys of the Foundation.—All moneys of the
foundation, from whatever source derived, shall be paid
to the treasurer of the foundation. Said moneys shall be
deposited in the first instance by the treasurer in one or
more banks or trust companies, in one or more special
accounts, and each of such special accounts shall be
continuously secured by a pledge of direct obligations of
the United States of America or of the state, having an
aggregate market value, exclusive of accrued interest, at
all times at least equal to the balance on deposit in such
account. Such securities shall either be deposited with
the treasurer or be held by a trustee or agent satisfactory
to the foundation. All banks and trust companies are
authorized to give such security for such deposits. The
moneys in said accounts shall be paid out on the warrant
or other order of the treasurer of the foundation, or of
such other person or persons as the foundation may
authorize to execute such warrants or orders.

Sec. 11. Conflict of Interest.—No member of the foun-
dation or officer or employee thereof shall either directly
or indirectly be a party to or be in any manner interested
in any contract or agreement with the foundation for
any matter, cause or thing whatsoever by reason whereof
any liability or indebtedness shall in any way be created
against such foundation. If any contract or agreement
shall be made in violation of the provisions of this sec-
tion, the same shall be null and void and no action shall
be maintained thereon against such foundation.

Sec. 12. Limitation of Powers.—The state does hereby
pledge to and agree with the United States and any other
federal agency that in the event any federal agency shall
construct or loan or contribute any funds for the con-
struction, extension, improvement or enlargement of any
wood products project, or any portion thereof, the state
will not alter or limit the rights and powers of the foun-
dation in any manner which would be inconsistent with
the due performance of any agreements between the
foundation and any such federal agency, and the foun-
dation shall continue to have and may exercise all
powers herein granted, so long as the same shall be
necessary or desirable for the carrying out of the pur-
poses of this article.

Sec. 13. Audit.—The accounts and books of the founda-
tion, including its receipts, disbursements, contracts,
deeds of trust, investments and other matters re-
lating to its finances, operation and affairs, shall be
examined and audited from time to time by the state tax
commissioner in accordance with statutes applicable to
audits of state agencies.

Sec. 14. Severability and Construction.—The provisions
of this article are considered remedial and shall be lib-
erally construed and interpreted so as to effect the gen-
eral purposes and objectives hereof. The provisions of
the article shall be severable, and if any of the provisions
thereof shall be held unconstitutional, such decisions
shall not affect the validity of any of the remaining pro-
visions of this article. It is hereby declared as the legis-
lative intent that this article would have been adopted
had such unconstitutional provisions not been included
herein.

CHAPTER 23
(House Bill No. 338—By Mr. Abrams and Miss Tsapis)

[Passed March 1, 1963; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend article one, chapter seven of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated sec-
tion three-i, relating to the authority of the county courts
to cooperate with other governmental units in carrying
out their duties, powers and responsibilities.
Be it enacted by the Legislature of West Virginia:

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


Section 3-i. County court may cooperate with other governmental units.

Section 3-i. County Court May Cooperate with Other Governmental Units.—Any county court may join together in the exercise of any of its powers, duties and responsibilities, or otherwise cooperate with any other county or counties, municipality or municipalities, the government of this state or of the United States in carrying out any lawful purpose not in conflict with the constitution of West Virginia.

CHAPTER 24

(House Bill No. 340—By Mr. Abrams and Miss Tsapis)

[Passed March 8, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a, relating to the issuance and retiring of revenue bonds for the purpose of constructing, reconstructing and renovating any county jail facility.

Be it enacted by the Legislature of West Virginia:

That article three, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seven-a, to read as follows:
Article 3. County Property.

Section 7-a. Same; bonds for construction or renovation of county jail.

Section 7-a. Same; Bonds for Construction or Renovation of County Jail.—The county courts of the several counties are hereby authorized to issue revenue bonds for the purpose of constructing, reconstructing and renovating any jail facility used for county prisoners; and for the purpose of retiring such bonds, the county court may pledge for a period not to exceed twenty years, the funds available to the county under the provisions of section fifteen, article five of this chapter.

CHAPTER 25

(House Bill No. 501—By Mr. Mills and Mr. Davidson)

[Passed March 9, 1963; in effect July 1, 1963. Approved by the Governor.]

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 amended, relating to rewards and detection of crime.

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 amended, be amended and reenacted to read as follows:

Article 4. Prosecuting Attorney, Rewards and Legal Advice.

Section 2. Rewards and detection of crime; bounties.

Section 2. Rewards and Detection of Crime; Bounties. —The prosecuting attorney of any county, with the approval of the county court, or of the governor, or of the court of the county vested with authority to try criminal offenses, or of the judge thereof in vacation, may, within his discretion, offer rewards for the apprehension of persons charged with crime, or may expend money for the
detection of crime. Any money expended under this section shall, when approved by the prosecuting attorney, be paid out of the county fund, in the same manner as other county expenses are paid. The county court may also offer reasonable bounties and rewards for the destruction of noxious animals, birds of prey, or weeds in the county, payable out of the county treasury: Provided, however, That nothing herein shall permit or give to the prosecuting attorney of any county, having a population according to the last official census of sixty thousand or less, the right to appoint a full-time investigator or detector of crime, or to expend any money for the investigation of any crime committed in his county beyond the actual expense of the investigation of said crime, except in the county of Wyoming, the prosecuting attorney with the consent of the circuit judge and the county court therein, may appoint an investigator of crime to be paid an annual salary of not less than one thousand two hundred dollars nor more than twenty-four hundred dollars, and actual expenses, the salary to be fixed within these limits by the county court; except further in the county of Wayne, the prosecuting attorney may appoint an investigator of crime to be paid an annual salary of not less than thirty-six hundred dollars nor more than forty-eight hundred dollars, and actual expenses, the salary within these limits to be fixed by the county court; except further in the county of Lincoln, the prosecuting attorney may appoint an investigator of crime to be paid an annual salary of not less than one thousand two hundred dollars nor more than two thousand four hundred dollars and actual expenses, the salary within these limits to be fixed by the prosecuting attorney; except further in the county of Mason, the prosecuting attorney with the consent of the county court or the circuit judge, may appoint an investigator of crime to be paid a salary of not less than one hundred dollars nor more than two thousand four hundred dollars and actual expenses, the salary to be fixed within these limits by the county court; except further in the county of Marshall, the prosecuting attorney may appoint an investigator of crime to be paid an annual salary of not less than thirty-six hundred dollars nor
more than forty-eight hundred dollars, and actual ex-

penses, the salary within these limits to be fixed by the
county court.

CHAPTER 26

(Senate Bill No. 124—By Mr. Miller)

[Passed March 8, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to employment of counsel by county courts.

Be it enacted by the Legislature of West Virginia:

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

Article 4. Prosecuting Attorney, Rewards and Legal Advice.

Section 3. Employment of counsel.

Section 3. Employment of Counsel.—The county court of any county, having a population, according to the last official census, of sixty-five thousand or more, together with the judge of the circuit court of said county, shall have authority to employ such legal counsel as they may deem necessary for the purpose of advising such county court touching all matters of a civil character and to conduct any litigation of a civil character to which the county is a party. The county court shall also have authority to fix the compensation of any counsel so employed, which shall not exceed the sum of six thousand dollars annually, and to pay the same out of the county treasury. Any such counsel so employed may be removed at the pleasure of the county court.
CHAPTER 27

(House Bill No. 339—By Mr. Abrams and Miss Tsapis)

[Passed March 8, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the auditing and payment of claims of justices and constables; annual statement of sheriff of fines and costs received from justices; payment into state treasury.

Be it enacted by the Legislature of West Virginia:

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

Article 5. Fiscal Affairs.

Section 15. Auditing and Payment of Claims of Justices and Constables; Annual Statement of Sheriff of Fines and Costs Received from Justices; Payment into State Treasury.—All claims by justices and constables for fees due them in misdemeanor proceedings in the county, instituted before them on and after the effective date of this section, shall be audited and examined by the county court, and if found correct and if submitted, as provided in section fourteen, article seventeen, chapter fifty of this code, the county court shall cause orders to be issued therefor on the sheriff to be paid out of the general school fund or out of the general county fund, as the court may direct. The sheriff shall annually, during the month of January, render under oath to the auditor a true statement of the account of all fines and costs collected by justices and transmitted to him and pay into the treasury of the state, the net proceeds of such fines and costs as exhibited by such account, to be appropriated as directed.
by the fifth section of article twelve of the constitution; failure so to do shall be deemed a breach of his official duty. For the purposes of this section, the net proceeds of such fines and costs shall be deemed to be the proceeds remaining after deducting therefrom the lawful fees of constables and justices of the peace; cost of auditing the accounts of justices of the peace and constables by the chief inspector’s office; expenses for operation and maintenance of the county jail; and the costs of constructing, reconstructing and renovating any jail facility used for county prisoners.

CHAPTER 28

(House Bill No. 565—By Mr. Brotherton)

(Passed March 9, 1963; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact section eleven, article eight, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to deductions from sentence for good conduct and for the donation of blood.

Be it enacted by the Legislature of West Virginia:

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

Article 8. Jail and Jailer.

Section 11. Deduction from sentence for good conduct; donating blood.

Section 11. Deduction from Sentence for Good Conduct; Donating Blood.—Every prisoner sentenced to the county jail for a term exceeding six months who, in the judgment of the sheriff, shall faithfully comply with all rules and regulations of said county jail during his term of confinement shall be entitled to a deduction of five days from each month of his sentence.
In addition to the foregoing, every prisoner who desires to and does donate blood to any person, agency, organization, corporation or association as may be approved by the sheriff, shall be entitled to a deduction of five days from his sentence for each pint of blood so donated.

CHAPTER 29

(House Bill No. 367—By Mr. Speaker, Mr. Singleton, and Mr. Abrams)

[Passed March 8, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twelve, relating to the creation of county development authorities.

Be it enacted by the Legislature of West Virginia:

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


Section
1. Establishment authorized; name; exceptions.
2. Purposes.
3. Management and control vested in board; appointment and terms of members; vacancies; removal of members.
4. Qualification of members.
5. Compensation of members; expenses.
6. Authority to be a public corporation.
8. Incurring indebtedness; rights of creditors.
10. Property, bonds and obligations of authority exempt from taxation.
11. Participation and appropriations authorized.
12. Contributions by county courts, municipalities and others; funds and accounts; reports; audits and examination of books, records and accounts.
13. Sale or lease of property; reversion of assets upon dissolution.
14. Employees to be covered by workmen's compensation.
15. Liberal construction of article.

Section 1. Establishment Authorized; Name; Exceptions.—Except as hereinafter provided, the county court
of every county is hereby authorized to create and
establish a public agency to be known as a develop-
ment authority. The name of the authority shall con-
tain the words "development authority," together with
the designation of the county within which such authority
is intended to operate. Nothing in this article contained,
however, shall be construed as permitting the county
court of any county in which there exists, on the date
on which this article becomes effective, one or more pub-
lic development authorities, corporations or commissions,
organized and existing pursuant to an act or acts of the
Legislature, either local or general, and performing sub-
stantially the same or similar functions as the develop-
ment authorities herein authorized, to create and estab-
lish such a development authority until such time as all
such other public development authorities, corporations
and commissions cease operations in such county.

Sec. 2. Purposes.—The purposes for which the author-
ity is created are to promote, develop and advance the
business prosperity and economic welfare of the county
for which it is created, its citizens and its industrial com-
plex; to encourage and assist through loans, investments
or other business transactions in the locating of new
business and industry within the county and to rehabili-
tate and assist existing businesses and industries therein;
to stimulate and promote the expansion of all kinds of
business and industrial activity which will tend to ad-
vance business and industrial development and maintain
the economic stability of the county, provide maximum
opportunities for employment, encourage thrift, and im-
prove the standard of living of the citizens of the county;
to cooperate and act in conjunction with other organiza-
tions, federal, state or local, in the promotion and ad-
vancement of industrial, commercial, agricultural, and
recreational developments within the county; and to furn-
ish money and credit, land and industrial sites, technical
assistance and such other aid as may be deemed requisite
to approved and deserving applicants for the promotion,
development and conduct of all kinds of business activity
within the county.
Sec. 3. Management and Control Vested in Board; Appointment and Terms of Members; Vacancies; Removal of Members.—The management and control of the authority, its property, operations, business and affairs shall be lodged in a board of not fewer than twelve or more than twenty-one persons who shall be appointed by the county court and be known as members of the authority. One member shall be appointed by the county court to represent it on the board. The city and town council of each municipality located within the county shall submit to the county court the name of one representative to be appointed to the board. Other members shall be appointed by the county court and shall include representatives of business, industry and labor. The members of the commission first appointed shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equal as possible between these terms. Thereafter, members shall be appointed for terms of three years each. A member may be reappointed for such additional term or terms as the appointing agency may deem proper. If a member resigns, is removed or for any other reason his membership terminates during his term of office, a successor shall be appointed by the appointing agency to fill out the remainder of his term. Members in office at the expiration of their respective terms shall continue to serve until their successors have been appointed and have qualified. The appointing agency may at any time remove its appointed member of the commission by an order duly entered of record or by other action appropriate for such appointing agency and may appoint a successor member for any member so removed.

In addition to the appointing agencies hereinbefore named, such other persons, firms, unincorporated associations, and corporations, who reside, maintain offices, or have economic interests, as the case may be, in the county, shall be eligible to participate in and request the county court to appoint members to the development authority as the said authority shall by its by-laws provide.
Sec. 4. Qualification of Members.—All members of the board of the authority shall be citizens of the county in which the authority is intended to operate, and bona fide residents of the municipality by which they are appointed.

Sec. 5. Compensation of Members; Expenses.—No member of the authority shall receive any compensation, whether in formal salary, per diem allowances or otherwise, in connection with his services as such member. Each member shall, however, be entitled to reimbursement by the authority for any necessary expenditures in connection with the performance of his general duties as such member.

Sec. 6. Authority to Be a Public Corporation.—The authority and the members thereof shall constitute and be a public corporation under the name provided for in section one, and as such shall have perpetual succession, may contract and be contracted with, sue and be sued, plead and be pleaded, and have and use a common seal.

Sec. 7. Powers Generally.—The development authority is hereby given power and authority as follows: (1) To make and adopt all necessary by-laws, rules and regulations for its organization and operations not inconsistent with law; (2) to elect its own officers, to appoint committees and to employ and fix compensation for personnel necessary for its operation; (3) to enter into contracts with any person, agency, governmental department, firm or corporation, including both public and private corporations, and generally to do any and all things necessary or convenient for the purpose of promoting, developing and advancing the business prosperity and economic welfare of the county in which it is intended to operate, its citizens and industrial complex; (4) to delegate any authority given to it by law to any of its officers, committees, agents or employees; (5) to apply for, receive and use grants-in-aid, donations and contributions from any source or sources, and to accept and use bequests, devises, gifts and donations from any person, firm or corporation; (6) to acquire lands and hold title thereto in its own name; (7) to purchase, own, hold, sell and dispose of personal property and to sell, lease or otherwise
dispose of any real estate which it may own; (8) to borrow money and execute and deliver negotiable notes, mortgage bonds, other bonds, debentures, and other evidences of indebtedness therefor, and give such security therefor as shall be requisite, including giving a mortgage or deed of trust on its real or personal property and facilities in connection with the issuance of mortgage bonds; (9) to raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article four-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, being chapter sixty-eight, acts of the Legislature, regular session, one thousand nine hundred thirty-five, as amended, it being hereby expressly provided that a development authority created under this article is a "municipal authority" within the definition of that term as used in said article four-a, chapter eight of the code; and (10) to expend its funds in the execution of the powers and authority herein given.

Sec. 8. Incurring Indebtedness; Rights of Creditors.—The authority may incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with carrying out its purposes as hereinbefore mentioned. No statutory limitation with respect to the nature or amount of indebtedness which may be incurred by municipalities or other public bodies shall apply to indebtedness of the authority. No indebtedness of any nature of the authority shall constitute an indebtedness of the county court of the county in which the commission is intended to operate or any municipality situated therein, or a charge against any property of said county court, municipalities, or other appointing agencies. The rights of creditors of the authority shall be solely against the authority as a corporate body and shall be satisfied only out of property held by it in its corporate capacity.

Sec. 9. Agreements in Connection with Obtaining Funds.—The authority may, in connection with obtaining funds for its purposes, enter into any agreement with any person, firm or corporation, including the federal
Sec. 10. Property, Bonds and Obligations of Authority Exempt From Taxation.—The authority shall be exempt from the payment of any taxes or fees to the state or any subdivision thereof or to any officer or employee of the state or other subdivision thereof. The property of the authority shall be exempt from all local and municipal taxes. Bonds, notes, debentures and other evidence of indebtedness of the authority are declared to be issued for a public purpose and to be public instrumentalities, and shall be exempt from taxes.

Sec. 11. Participation and Appropriations Authorized. —The county court is hereby authorized and empowered to appoint members of the said authority and the county court and any municipality therein, or any one or more of them, jointly and severally, are hereby authorized and empowered to contribute by appropriation from their respective general funds not otherwise appropriated to the cost of the operation and projects of the authority.

The county court of the county or municipal corporations therein are hereby authorized and empowered to transfer and convey to the said authority property of any kind heretofore acquired by said county court or municipal corporation for or adaptable to use in industrial and economic development, such transfers or conveyances to be without consideration or for such price and upon such terms and conditions as the said county court or municipal corporations shall deem proper.

Sec. 12. Contributions by County Courts, Municipalities and Others; Funds and Accounts; Reports; Audits and Examination of Books, Records and Accounts.—Contributions may be made to the authority from time to time by the county court of the county or any municipal corporation therein, and by any persons, firms or corporations which shall desire to do so. All such funds and all other funds received by the authority shall be deposited in such bank or banks as the authority may direct and shall be withdrawn therefrom in such manner as the authority
may direct. The authority shall keep strict account of all
its receipts and expenditures and shall each quarter make
a quarterly report to the county court and municipalities
containing an itemized statement of its receipts and
disbursements during the preceding quarter. Within sixty
days after the end of each fiscal year, the authority shall
make an annual report containing an itemized statement
of its receipts and disbursements for the preceding year,
and such annual report shall be published once a week for
two successive weeks in two newspapers of opposite poli-
tics of general circulation in the county. The books, records
and accounts of the authority shall be subject to audit and
examination by the office of the state tax commissioner of
West Virginia and by any other proper public official or
body in the manner provided by law.

Sec. 13. Sale or Lease of Property; Reversion of Assets
upon Dissolution.—In the event the board of the authority
shall so determine, the authority may lease or sell all of
its property and equipment on such terms and conditions
as the authority may fix and determine. Upon the disso-
lution of the authority, all of its assets and property shall
revert to and become the property of the county for which
said authority was created.

Sec. 14. Employees to Be Covered by Workmen’s
Compensation.—All employees of the authority eligible
thereto shall be deemed to be within the workmen’s com-
pensation act of West Virginia, and premiums on their
compensation shall be paid by the authority as required
by law.

Sec. 15. Liberal Construction of Article.—It is the pur-
pose of this article to provide for promotion, development
and advancement of the business prosperity and economic
welfare of the county, its citizens and its industrial com-
plex, and this article shall be liberally construed as giving
to the authority full and complete power reasonably re-
quired to give effect to the purposes hereof.

Sec. 16. Provisions Severable.—The several sections
and provisions of this article are severable, and if any
section or provisions hereof shall be held unconstitutional,
AN ACT to amend and reenact section four, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salaries of judges of circuit courts.

Be it enacted by the Legislature of West Virginia:

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

**Article 7. Compensation and Allowances.**

**Section 4. Salaries of Judges of Circuit Courts; Additional Compensation from Counties.**—The salaries of the judges of the circuit courts shall be paid out of the state treasury and shall, unless otherwise provided by law, be in the following annual amounts:

1. In circuits having more than one hundred thousand population, fourteen thousand dollars;
2. In circuits having less than one hundred thousand population, twelve thousand five hundred dollars.

Any county court or the board of commissioners of Ohio county may pay the judge of the circuit court additional compensation, but the salary and additional compensation or combined contribution of the several county courts and board of commissioners shall not exceed twenty thousand dollars.

The population shall be according to the United States census, or the estimate of the United States bureau of...
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18 census, as certified to the state auditor by the United States director of the census last preceding the beginning of the calendar year in which salary is payable.

21 The county court of Wyoming county may pay the judge of the twenty-seventh judicial circuit additional compensation, but such additional compensation shall not exceed one thousand five hundred dollars annually.

25 The county court of Cabell county may pay the judge of the sixth judicial circuit additional compensation, but such additional compensation shall not exceed two thousand dollars annually.

CHAPTER 31
(House Bill No. 261—By Mr. Brotherton)

[Passed February 26, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowances to circuit judges for stationery, postage and stenographic help; additional compensation from counties; payments therefor.

Be it enacted by the Legislature of West Virginia:

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

Article 7. Compensation and Allowances.

Section 6. Allowances to Circuit Judges for Stationery, Postage and Stenographic Help; Additional Compensation from Counties; Payments Therefor.—Each judge of the circuit court shall be allowed an amount not to exceed two hundred twenty-five dollars per month for the pay-
ment of stenographic help necessary in the discharge of
the duties of his office, and each judge shall be allowed
an amount not to exceed twenty-five dollars per month
for the procurement of necessary stationery, payment of
postage, and necessary supplies for his office. The judge
shall be reimbursed for the actual amounts expended by
him for stationery, supplies and postage. Payment for
stenographic help shall be made directly to the person
performing the stenographic work. Such amounts shall
be paid monthly out of the state treasury, but not until
the judge submits an itemized statement covering the
same.

Any county court or the board of commissioners of
Ohio county may pay such additional compensation for
stenographic help for the judge of any circuit which
may be necessary in the discharge of the duties of the
office of the judge of such circuit, or any combination
of counties in any circuit may contribute to such addi­
tional stenographic help. Such additional compensation
shall be paid from county funds directly to the person or
persons performing such work.

CHAPTER 32
(House Bill No. 113—By Mr. Simonton)

[Passed February 11, 1963; in effect March 1, 1963. Approved by the Governor.]

AN ACT to amend and reenact sections one-d and one-bb,
article two, chapter fifty-one of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, rela­
ting to the terms of the circuit courts of the fourth and
twenty-eighth judicial circuits.

Be it enacted by the Legislature of West Virginia:

That sections one-d and one-bb, article two, 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:
Article 2. Circuit Courts; Circuit, Criminal and Intermediate Judges.

Section 1-d. Fourth circuit.

Section 1-d. Fourth Circuit.—For the county of Wood, on the second Monday in January, April, July and October.

For the county of Wirt, on the last Monday in March, June and September.

Sec. 1-bb. Twenty-eighth Circuit.—For the county of Nicholas, on the third Tuesday in February, May and August, and the second Monday in November.

CHAPTER 33

(Senate Bill No. 160—By Mr. Moreland)

[Passed March 9, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the crime of rape; age of consent; carnal knowledge of male person and penalties.

Be it enacted by the Legislature of West Virginia:

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

Article 2. Crimes against the Person.

Section 15. Rape; age of consent; carnal knowledge of male person; penalties.

Section 15. Rape; Age of Consent; Carnal Knowledge of Male Person; Penalties.—If any male person carnally knows a female person, not his wife, against her will by force, or if any male person over the age of sixteen years carnally knows a female person of previous chaste char-
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6. If a male person, not his wife, under that age, he shall be guilty of a
   felony, and upon conviction, shall be punished with death
   or with confinement in the penitentiary for life, in the
discretion of the court, or, if the jury add to its verdict a
recommendation for mercy, with confinement in the peni-
tentiary for not less than five nor more than twenty
years, or if any male person over the age of sixteen years
carnally knows a female person, not his wife, under the
age of ten years, he shall be guilty of a felony and,
upon conviction, shall be punished with death or with
confinement in the penitentiary for life, in the discretion
of the court, or, if the jury add to its verdict a recom-
mandation for mercy, with confinement in the peniten-
tiary for not less than five nor more than twenty years:
Provided, That this section shall not apply to any male
person under sixteen years of age who carnally knows a
female over twelve years of age with her free consent.

23. Any female person over the age of sixteen years who shall
carnally know any male person, not her husband, under
that age shall be guilty of misdemeanor, and, upon con-
viction, shall be confined in the county jail not less than
two nor more than six months.

CHAPTER 34
(House Bill No. 483—By Mr. Ford and Mr. Buch)

[Passed March 5, 1963; in effect July 1, 1964. Approved by the Governor.]

AN ACT to amend and reenact section thirty-two, article three,
chapter sixty-one of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to
removal out of a county of property securing a claim and
imposing penalties.

Be it enacted by the Legislature of West Virginia:

That section thirty-two, article three, chapter sixty-one of
the code of West Virginia, one thousand nine hundred thirty-
one, as amended, be amended and reenacted to read as follows:
Article 3. Crimes against Property.

Section 32. Removal out of county of property securing a claim; penalties.

Section 32. Removal Out of County of Property Securing a Claim; Penalties.—Any debtor under any security instrument conveying personal property, who retains possession of such personal property, and who, without the consent of the owner of the claim secured by such security instrument, and with intent to defraud, removes or causes to be removed any of the property securing such claim out of the county where it was situated at the time it became security for such claim or out of a county to which it was removed by virtue of a former consent of the owner of the claim under this section, or, with intent to defraud, secretes or sells the same, or converts the same to his own use, shall be guilty of a misdemeanor, and, upon conviction, be fined not more than five hundred dollars, or imprisoned not more than six months, or both, in the discretion of the court.

CHAPTER 35

(House Bill No. 297—By Mr. Barker)

[Passed March 9, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-nine, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the giving of worthless checks, and providing penalties.

Be it enacted by the Legislature of West Virginia:

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

Article 3. Crimes against Property.

Section 39. Giving worthless check; penalties.

Section 39. Giving Worthless Check; Penalties.—Any person who, with intent to defraud, shall make, draw,
issue, utter or deliver to another any check, draft or order for the payment of money upon any bank, or other depository, and thereby obtain from such other any credit, credit on account, money, goods or other property or thing of value, knowing at the time of such making, drawing, issuing, uttering or delivering that the maker or drawer thereof has not sufficient funds in, or credit with such bank or other depository for the payment of such check, draft or order in full upon its presentment, shall be guilty of a misdemeanor, if the amount of such check, draft or order be under fifty dollars, and upon conviction thereof, shall be confined in the county jail not less than five nor more than sixty days, or fined not less than five dollars nor more than one hundred dollars, or both fined and imprisoned; and if the amount of such check, draft or order be fifty dollars or over, he shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years and be fined not more than one thousand dollars. The making, drawing, issuing, uttering or delivering of a check, draft or order upon such bank, or other depository by any person knowing that there is not sufficient funds or credit in such bank or depository from which the same can be paid on presentment shall, as against the drawer, be prima facie evidence of knowledge of insufficiency of funds, or lack of credit, and of intent to defraud: Provided, That if such check, draft or order and accrued court costs be paid at any time previous to the trial or examination of such person before a justice of the peace, or before indictment of such person by a grand jury, then no presumption of knowledge of insufficiency of funds, or lack of credit, and of intent to defraud shall arise.

The making, drawing, issuing, uttering or delivery of any such check, draft or order, for or on behalf of any corporation, or in its name, by any officer or agent of such corporation, shall subject such officer or agent to the penalties of this section to the same extent as though such check, draft or order was his own personal act, when such agent or officer knows that such corporation does not have sufficient funds or credit with such bank or
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44 other depository from which such check, draft or order
can legally be paid upon presentment.
46 Such person, officer or agent, shall be prosecuted in the
county in which he makes, draws, issues or delivers such
check. Justices of the peace shall have jurisdiction to
try any misdemeanor charge hereunder. The word
"credit" as used herein shall be construed to mean an
arrangement or understanding with the bank or deposi-
tory for the payment of such check, draft or order.

CHAPTER 36

(House Bill No. 208—By Mr. McCoy)

[Passed March 1, 1963; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section fifteen, article ten,
chapter sixty-one of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to
pecuniary interest of county and district officers, and
providing 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,
as amended, be amended and reenacted to read as follows:

Article 10. Crimes against Public Policy.

Section

15. Pecuniary interest of county and district officers, teachers and
school officials in contracts; exception; offering or giving com-
pensation; penalties.

Section 15. Pecuniary Interest of County and District
Officers, Teachers and School Officials in Contracts; Ex-
ception; 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, prin-
cipal 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 pecuniarily interested,
directly or indirectly, in the proceeds of any contract or
service, or in furnishing any supplies in the contract
for, or the awarding or letting of, which as such mem-
ber, officer, secretary, supervisor, superintendent, princi-
pal, or teacher, he may have any voice, influence or con-
control: Provided, however, That nothing herein shall be
construed to prevent or make unlawful the employment
of the spouse of any such member, officer, secretary,
supervisor, superintendent, principal or teacher as prin-
cipal or teacher in the public schools of any county,
nor to prevent or make unlawful the employment by any
joint county and circuit clerk of his or her spouse. Any
person or officer named who shall violate any of the
foregoing provisions of this section shall be guilty of a
misdemeanor, and, upon conviction thereof, be fined not
less than fifty nor more than five hundred dollars, and
may, in the discretion of the court, be imprisoned for a
period not to exceed one year. In addition to the fore-
going penalties, any such officer shall be removed from
his office and the certificate or certificates of any teacher,
principal, supervisor or superintendent who violates any
provision of this section shall, upon conviction thereof,
be revoked immediately. Any person, firm or corpora-
tion that offers or gives any compensation whatever to
any of the officers or persons hereinbefore named or to
any other person with the intent to secure the influence,
support or vote of such officer or person for any contract,
service, award or other matter as to which any county
or school district shall become the paymaster, shall be
guilty of a misdemeanor, and, upon conviction thereof,
be fined not less than five hundred, nor more than twenty-
five hundred dollars, and, at the discretion of the court,
such person or any member of such firm, or, if it be a cor-
poration, any agent or officer thereof, so offering or giving
such compensation, may, in addition to such fine, be im-
prisoned for a period not to exceed one year.
The provisions of this section shall not apply to publica-
tions in newspapers required to be made by law.
CHAPTER 37
(Com. Sub. for Senate Bill No. 125—Originating in the
Senate Committee on the Judiciary)

[Passed March 9, 1963; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to repeal sections seventeen and eighteen, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend article ten of said chapter by adding thereto five new sections, designated sections twenty-five, twenty-six, twenty-seven, twenty-eight and twenty-nine, making it unlawful for any person to engage in work, labor or business on Sunday or to employ any person to engage in work, labor or business on Sunday, with certain exceptions and limitations; declaring that the exemption for works of necessity or charity shall not be deemed to include selling at retail or wholesale or by auction, or offering or attempting to sell on Sunday any of certain specifically named items of merchandise and personal property; declaring that no contract shall be deemed void because it is made on Sunday; providing penalties for violations; declaring that each Sunday a person is engaged in work, labor or business or employs others to be so engaged, in violation of section twenty-five of said article, shall constitute a separate offense; giving justices of the peace concurrent jurisdiction with circuit and criminal courts of any such offense or offenses; providing for a local option election; and providing a separability clause.

Be it enacted by the Legislature of West Virginia:

That sections seventeen and eighteen, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article ten of said chapter be amended by adding thereto five new sections, designated sections twenty-five, twenty-six, twenty-seven, twenty-eight and twenty-nine, to read as follows:
Article 10. Crimes against Public Policy.

Section
25. Unlawful to engage in work, labor or business on Sunday.
26. Limitation of preceding section; contract made on Sunday valid.
27. Punishment for violation.
28. Local option election; form of petition therefor; election procedure; form of ballot; effect of such election.
29. Separability of provisions of article.

Section 25. Unlawful to Engage in Work, Labor or Business on Sunday.—On the first day of the week, commonly known and designated as Sunday, it shall be unlawful for any person to engage in work, labor or business, or to employ any person to engage in work, labor or business, except in household or other work of necessity or charity. The exemption for works of necessity or charity contained in the preceding sentence shall not be deemed to include selling at retail or wholesale or by auction, or offering or attempting to sell on Sunday any of the following: Jewelry; precious and semiprecious stones; silverware; watches; clocks; luggage; musical instruments; recordings; toys; clothing and wearing apparel; clothing accessories; footwear; textile yard goods; housewares; china; kitchenware; home, business, office or outdoor furniture, furnishings and appliances; sporting goods (excluding sales or rental of bathing, boating and fishing paraphernalia and equipment, and sales or rental on the premises where sports, athletic games and events or recreational facilities are located or conducted of equipment essential to the normal use or operation of such premises for the purposes specified); pets, pet equipment or supplies; photographic supplies (excluding cameras, film and flash bulbs); hardware; tools; paints; building and lumber supplies and materials; motor vehicles; and farm implements. No inference shall arise from the foregoing enumeration of classes of personal property that sales or offers or attempts to sell other classes of personal property not mentioned are included within the above exemptions for works of necessity or charity.

Sec. 26. Limitation of Preceding Section; Contract Made on Sunday Valid.—No conviction shall be had under the
preceding section of this article of any person for engaging in the following activities on Sunday:

(1) Transportation of the mail or any other activity in connection with the mail.

(2) Transportation of persons or property by any present or future mode of public or private conveyance or other activity in connection with any such mode of public or private conveyance.

(3) The operation of car washing establishments, garages and gasoline service stations, including the sale of commodities and services customarily furnished at such garages and service stations.

(4) The operation of manufacturing establishments, construction work, or where there is an obligation to fulfill a provision in a contract wherein time is of the essence, and the production and processing of natural resources.

(5) Operation of grocery stores, restaurants, taverns or other similar establishments engaged primarily in the sale of beverages or food products for human consumption.

(6) An isolated transaction in which any tangible personal property is sold by the owner thereof, such sale not being made in the ordinary course of repeated and successive transactions of like character by such owner.

(7) Professional and amateur sports, athletic contests and events, and concessions incidentally connected therewith.

(8) Operation of recreational, amusement, scenic, historic and educational facilities and activities in connection therewith.

(9) Advertising the sale of property or services.

(10) Unattended vending machines, vending personal property or services.

(11) The operation of antique shops and novelty and souvenir shops.

(12) The showing of real estate or mobile homes.
(13) The operation of a retail outlet for its products by any industry located in West Virginia.

(14) The sale of farm produce.

(15) The sale of flowers or floral wreaths and arrangements.

No contract shall be deemed void because it is made on Sunday.

Sec. 27. Punishment for Violation.—Any person violating the provisions of section twenty-five of this article shall, for the first offense, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than two hundred dollars. Any person violating the provisions of section twenty-five of this article shall, for the second offense occurring within one year of the first offense, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars and, in the discretion of the court, may be confined in jail for a period not exceeding thirty days. Any person violating the provisions of section twenty-five of this article shall, for the third or any subsequent offense occurring within two years of the previous offense, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars, and, in the discretion of the court, may be confined in jail for a period not exceeding six months.

Each Sunday a person is engaged in work, labor or business or employs others to be so engaged, in violation of section twenty-five of this article, shall constitute a separate offense.

Justices of the peace shall have concurrent jurisdiction, with circuit and criminal courts, of any such offense or offenses.

The penalties imposed by this section shall not be incurred by any person who conscientiously believes that Saturday ought to be observed as a Sabbath, and actually refrains from all secular business and labor on that day, provided he does not compel an apprentice or servant or
employee, not of his belief, to do secular work or business
on a Sunday.

Sec. 28. Local Option Election; Form of Petition There-
for; Election Procedure; Form of Ballot; Effect of Such
Election.—The county court of any county is hereby au-
thorized to call a local option election for the purpose of
determining the will of the voters as to whether the
provisions of section twenty-five of this article shall con-
tinue in effect in said county.

A petition for such local option election shall be in the
form hereinafter specified and shall be signed by qualified
voters residing within said county equal to at least ten
per cent of the persons qualified to vote within said
county at the last general election. Said petition may be
in any number of counterparts and shall be sufficient if
substantially in the following form:

PETITION ON LOCAL OPTION ELECTION
RESPECTING WORK, LABOR OR BUSINESS
ON SUNDAY IN .................. COUNTY, WEST VIRGINIA

Each of the undersigned certifies that he or she is a
person residing in .................. County, West Virginia, and
is duly qualified to vote in said county under the laws of
the state, and that his or her name, address and the date
of signing this petition are correctly set forth below.

The undersigned petition said county court to call and
hold a local option election upon the following question:
Shall the provisions of Section 25, Article 10, Chapter 61,
of the Code of West Virginia, one thousand nine hundred
thirty-one, as amended, continue in effect in ..................
County, West Virginia?

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(Each person signing must specify either his postoffice
address or his street number.)

Upon the filing of a petition for a local option election
in accordance with the provisions of this section, the
county court shall enter an order calling a local option
election and providing that the same shall be held at the
same time and as a part of the next primary or general
election to be held in said county. Said county court shall
give notice of such local option election by publication in
two newspapers of opposite politics and of general circu-
lation within said county. Said notice shall be given at
least once each week for two successive weeks prior to
the date of said election. If there is only one newspaper
published in said county publication of said notice therein
shall be sufficient.

Each person qualified to vote in said county at said
primary or general election shall likewise be qualified to
vote at the local option election. The election officers
appointed and qualified to serve as such at said primary
or general election shall conduct said local option election
in connection with and as a part of said primary or gen-
eral election. The ballots in said local option election
shall be counted and returns made by the election officers
and the results certified by the commissioners of election
to said county court which shall canvass the ballots, all
in accordance with the laws of the state of West Virginia
relating to primary and general elections insofar as the
same are applicable. The county court shall, without
delay, canvass the ballots cast at said local option elec-
tion and certify the results thereof.

The ballot to be used in said local option election shall
have printed thereon substantially the following:

"Shall the provisions of Section 25, Article 10, Chapter
61 of the Code of West Virginia, 1931, as amended, con-
tinue in effect in ............................................ County of West
Virginia?"

(Place a cross mark in the square opposite your choice.)

If a majority of the voters voting at any such local op-
tion election vote no on the foregoing question, the pro-
visions of section twenty-five, article ten, chapter sixty-
one of the code of West Virginia, one thousand nine hun-
dred thirty-one, as amended, shall no longer continue in
effect in said county.

Sec. 29. Separability of Provisions of Article.—If any
part of this article is declared unconstitutional by a court
3 of competent jurisdiction, such decision shall not affect
4 the validity of the remaining provisions of this article, or
5 the article in its entirety.

CHAPTER 38

(House Bill No. 87—By Mr. Speaker, Mr. Singleton,
and Mr. White)

[Passed March 1, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to repeal article twelve, chapter sixty-one of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended, and to enact in lieu thereof a new article,
designated article twelve, relating to the creation of a
commission on post-mortem examinations; providing for
a chief medical examiner; the method of performing
autopsies; and the duties of county coroners.

Be it enacted by the Legislature of West Virginia:

That article twelve, chapter sixty-one of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
be repealed and a new article, designated article twelve, be
enacted in lieu thereof, to read as follows:


Section

1. Commission on post-mortem examinations; establishment and
   composition; appointment and terms of members; organization
   and meetings; expenses of members.
2. Rules and regulations of commission.
3. Office of medical examinations established; appointment, duties,
   etc., of chief medical examiner; assistants and employees.
4. Central office and laboratory.
5. Certain salaries and expenses paid by state.
6. Chief medical examiner may obtain additional services and facili-
   ties.
7. Medical examiners.
8. Certain deaths to be reported to medical examiners; investigations
   and reports; authority of medical examiners to administer oaths,
   etc.; fees; failure to report deaths.
9. Permits required for cremation; fee.
10. When autopsies made and by whom performed; reports; record of
    deaths investigated; copies of records and information.
11. Exhumation; when ordered.
12. Facilities and services available to medical examiners.
13. Reports and records received as evidence; copies.
14. County coroners; appointment, oath, etc.; duties; fees.
15. Invalidity of any provision or application.
Section 1. Commission on Post-Mortem Examinations; Establishment and Composition; Appointment and Terms of Members; Organization and Meetings; Expenses of Members.—The commission on post-mortem examinations is hereby established. Such commission shall consist of six members, one of whom shall be a member of the West Virginia department of public safety, one of whom shall be qualified to practice law before the West Virginia supreme court of appeals, one of whom shall be a funeral director licensed by the West Virginia board of embalmers and funeral directors, one of whom shall be licensed to practice medicine and surgery by the medical licensing board of West Virginia, one of whom shall be licensed to practice medicine and surgery by the West Virginia board of osteopathy and one of whom shall represent the public generally.

The governor shall make these appointments with the advice and consent of the senate and in making the initial appointments he shall appoint one member for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, one for a term of five years and one for a term of six years. Thereafter each member shall serve for a term of six years or until his successor in office is duly appointed and qualified.

Each year the commission shall elect one of its members as chairman and one as vice chairman. Members of the commission shall receive no compensation for their services as such but they shall be repaid their actual expenses incurred in their service on the commission. The commission shall meet at least every six months and oftener as its duties require.

Sec. 2. Rules and Regulations of Commission.—The commission on post-mortem examinations may promulgate such rules and regulations not inconsistent with law as it may deem necessary or appropriate to carry out effectively the provisions of this article. Such rules and regulations shall be for administrative purposes only and shall not have the force and effect of law.

Sec. 3. Office of Medical Examinations Established;
Appointment, Duties, etc., of Chief Medical Examiner; Assistant and Employees.—The office of medical examinations is hereby established, to be operated under the control and supervision of the commission on post-mortem examinations. Such office shall be directed by a chief medical examiner, who shall be appointed by the commission, to serve at the will and pleasure of the commission. The chief medical examiner may employ such assistants, pathologists, toxicologists, laboratory technicians, regional medical examiners and other staff members as the commission may specify.

All persons employed by the chief medical examiner shall be responsible to him and may be discharged by him for any reasonable cause. The commission shall specify the qualifications required for each position in the office of medical examinations, and each position shall be subject to such rules and regulations as the commission may prescribe.

The chief medical examiner shall be a physician licensed to practice medicine in West Virginia, who is a diplomate or eligible for certification by the American board of pathology or the American osteopathic board of pathology. The salary of the chief medical examiner and the salaries of all assistants and employees of the office of medical examinations shall be fixed by the Legislature from funds appropriated for that purpose. The chief medical examiner shall serve as ex officio secretary for the commission, and he shall take such oath and provide such bond as may be required by law. Within the discretion of the commission, the chief medical examiner and his assistants shall lecture or instruct in the field of legal medicine and other related subjects to the West Virginia University school of medicine, the department of public safety, other law enforcement agencies, and other interested groups.

Sec. 4. Central Office and Laboratory.—The office of medical examinations shall establish and maintain a central office and a laboratory having adequate professional and technical personnel and medical and scientific facilities for the performance of the duties imposed by this article. The central laboratory and office shall be main-
tained in connection with the facilities of the West Virginia University school of medicine, and the commission is hereby empowered to contract for the use of such facilities.

Sec. 5. Certain Salaries and Expenses Paid by State.—The salaries of the chief medical examiner, and the technical and clerical personnel in the central office and laboratory, the expenses of maintaining the central office and laboratory, the cost of pathological, bacteriological and toxicological services rendered by others than the chief medical examiner and his assistants, and the traveling and other expenses of the members of the commission and of the personnel of the central office and laboratory, shall be paid by the state out of funds appropriated for that purpose.

Sec. 6. Chief Medical Examiner May Obtain Additional Services and Facilities.—Subject to the approval of the commission, the chief medical examiner may, in order to provide facilities for investigating the cause of death as authorized in this article, employ and pay qualified pathologists and toxicologists to make autopsies and such pathological and chemical studies and investigations as he may deem necessary, and he may arrange for the use of existing laboratory facilities for such purposes whenever these are available. The commission may prepare a list of approved pathologists available for this work in the several counties or sections of the state, and in such case the chief medical examiner may call upon such pathologists where they are available for services in case of need.

Sec. 7. Medical Examiners.—The commission shall appoint for each county in the state a medical examiner to serve for a term of three years and until his successor is duly appointed and takes office. A medical examiner shall turn over and deliver to his successor in office all of the papers, reports and records of his said office. Medical examiners shall be qualified physicians, licensed to practice medicine in West Virginia.

Any vacancy in the office of medical examiner shall be filled by the commission, but in the event of any such
vacancy, temporary appointment may be made by the chief medical examiner, to expire upon the appointment by the commission of a medical examiner for that county. One person may be appointed to serve as medical examiner for more than one county, and the medical examiner need not be a resident of the county which he serves.

When it becomes necessary, because of illness, absence, need, or personal interest, the chief medical examiner shall have the power to appoint any other qualified physician in the county in which a death is to be investigated, to act as assistant medical examiner for such county.

Sec. 8. Certain Deaths to Be Reported to Medical Examiners; Investigations and Reports; Authority of Medical Examiners to Administer Oaths, etc.; Fees; Failure to Report Deaths.—When any person shall die in this state from violence, or by apparent suicide, or suddenly when in apparent good health, or when unattended by a physician, or when an inmate of a public institution not hospitalized therein for organic disease, or from some disease which might constitute a threat to public health, or in any suspicious, unusual or unnatural manner, the medical examiner of the county in which such death occurs shall be immediately notified by the physician in attendance, by any law enforcement officer having knowledge of such death, or by the funeral director, or by any other person present. Any physician or law enforcement officer, funeral director or embalmer who wilfully fails to comply with this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty dollars nor more than five hundred dollars. Upon receipt of such notice, the medical examiner shall take charge of the dead body, make inquiries regarding the cause and manner of death, reduce his findings to writing, and promptly make a full report thereof to the chief medical examiner on forms prescribed for such purpose, retaining one copy of such report for his own office records, and that of the chief medical examiner and should deliver another copy thereof to the prosecuting attorney of such county, and to any attorney of record in any criminal proceedings or civil action wherein the cause of death is an issue. The medical examiner may administer oaths and affirmations,
and take affidavits and make examinations as to any matter within the jurisdiction of his office. The medical examiner shall take possession of any objects or articles which, in his opinion, may be useful in establishing the cause of death, and deliver them to the prosecuting attorney of such county. For each investigation under this section, including the making of the required reports, the medical examiner shall receive such fee as may be determined by the commission on post-mortem examinations, which fee shall be paid by the state.

Sec. 9. Permits Required for Cremation; Fee.—It shall be the duty of any person cremating, or causing or requesting the cremation of, the body of any dead person who died in this state, to secure a permit for such cremation from the chief medical examiner, or from the medical examiner of the county wherein such death occurred, and any such person or persons who shall wilfully fail to secure such permit for cremation, upon conviction thereof, shall be fined not less than twenty dollars and not more than five hundred dollars; such permit for cremation shall be acted upon by the chief medical examiner or the medical examiner as promptly as possible. A fee of five dollars shall be paid to any medical examiner for his issuance of a permit for cremation, such fee to be paid by the person requesting such permit.

Sec. 10. When Autopsies Made and by Whom Performed; Reports; Record of Deaths Investigated; Copies of Records and Information.—If in the opinion of the chief medical examiner, or of the medical examiner of the county in which the death in question occurred, it is advisable and in the public interest that an autopsy be made, or if an autopsy be requested by either the prosecuting attorney or the judge of the circuit court or other court of record having criminal jurisdiction in such county, such autopsy shall be made by the chief medical examiner, by a member of his staff, or by such competent pathologist as the chief medical examiner shall designate and employ pursuant to the provisions of this article. The chief medical examiner may employ any medical examiner who is a qualified pathologist to make such autopsies, and the fees
to be paid hereunder for autopsies hereunder shall be in
addition to the fee provided for investigations and made
pursuant to section eight of this article. A full record and
report of the findings developed by the autopsy shall be
filed with the office of medical examinations by such
person making the autopsy.

Within the discretion of the chief medical examiner, or
of the person making such autopsy, or if requested by the
prosecuting attorney of such county, or of the county
where any injury contributing to or causing the death
was sustained, a copy of such report of the autopsy shall
be furnished such prosecuting attorney.

The office of medical examinations shall keep full,
complete, and properly indexed records of all deaths in-
vestigated, containing all relevant information concerning
the death, and the autopsy report if such be made. Any
prosecuting attorney or law enforcement officer may
secure copies of such records or information necessary
to him for the performance of his official duties. Copies
of such records or information shall be furnished, upon
request, to any party to whom the cause of death is a
material issue. Any person performing an autopsy pur-
suant to the authority of this section shall be empowered
to keep and retain, for and on behalf of the chief medical
examiner, any tissue from the body upon which the
autopsy was performed which may be necessary for fur-
ther study or consideration.

Sec. 11. Exhumation; When Ordered.—If, in any case
of sudden, violent or suspicious death, the body is buried
without any investigation by the chief medical examiner,
or by a medical examiner, it shall be the duty of the
medical examiner, upon being advised of such fact, to
notify the prosecuting attorney of such county, who shall
communicate the same to the judge of the circuit court or
other court of record having jurisdiction in such county,
and such judge may order that the body be exhumed and
an autopsy performed thereon, as provided in section ten
of this article, and the pertinent facts disclosed by the
autopsy shall be communicated to the prosecuting attor-
ney of such county.
Sec. 12. Facilities and Services Available to Medical Examiners.—Pursuant to proper rules and regulations as may hereafter be promulgated by the chief medical examiner, the facilities of the office of medical examinations and its laboratory, and the services of its professional staff, shall be made available to the medical examiners in their investigations under the provisions of section eight of this article, and to the persons conducting autopsies under the provisions of section ten of this article.

Sec. 13. Reports and Records Received as Evidence; Copies.—Reports of investigations and autopsies, and the records thereof, on file in the office of medical examinations or in the office of any medical examiner, shall be received as evidence in any court or other proceeding, and copies of records, photographs, laboratory findings and records on file in the office of medical examinations or in the office of any medical examiner, when duly attested by the chief medical examiner or by the medical examiner in whose office the same are filed, shall be received as evidence in any court or other proceeding for any purpose, for which the original could be received without any proof of the official character of the person whose name is signed thereto unless objected to by counsel: Provided, however, That statements of witnesses or other persons and conclusions upon extraneous matters are not hereby made admissible.

Sec. 14. County Coroners; Appointment, Oath, etc.; Duties; Fees.—It shall be the duty of the county court of every county, from time to time, to appoint a coroner for such county, who shall hold his office during the pleasure of such court, and shall take the oath of office prescribed for other county officers. The county coroners shall hereafter perform such duties as may be assigned to them under the rules and regulations promulgated by the commission on post-mortem examinations, and shall be paid such fees or amounts for such services as may be fixed by the commission on post-mortem examinations.

Sec. 15. Invalidity of any Provision or Application.—If any provision or application of this article is held in-
valid such invalidity shall not affect other provisions or
application of this article which can be given effect with­
out the invalid provisions or application, and to this end
the provisions of this article are declared to be severable.

CHAPTER 39
(House Bill No. 130—By Mr. Casto)

[Passed March 8, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article six, chapter sixty-two of the code of West Virginia, one thou­sand nine hundred thirty-one, as amended, relating to recognizances in criminal cases.

Be it enacted by the Legislature of West Virginia:

That section two-a, article six, 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:

Article 6. Recognizances in Criminal Cases.

Section 2-a. Cash deposits as recognizance without surety.

Section 2-a. Cash Deposits as Recognizance without Surety.—Whenever a person arrested on a criminal charge has been admitted to bail by a court or an officer authorized by law so to do, for his appearance before any court, judge or justice, he may, instead of entering into a recognizance with surety as required by law, give his personal recognizance and deposit, or cause to be deposited for him, in cash, the amount of bail he is re­quired to furnish, with the clerk of the circuit court of the county, the justice of the peace, or with the clerk of any other court in which he was admitted to bail, and the clerk or the justice of the peace with whom such deposit is made shall give him a certificate thereof, and upon delivering said certificate to the court or officer admitting him to bail, he shall be ordered to be released:

Provided, however, That in the event the court before
which he is to appear be the mayor's court, or the police
court of any municipality of this state, then in such
event, the deposit in cash of the amount of bail he is
required to furnish may be deposited with the mayor,
chief of police, desk sergeant, acting desk sergeant, town
sergeant, clerk or deputy clerk of the police court, or of
the mayor's court, town recorder, or such other person
as may be designated by the governing body of such
municipality by proper ordinance. A proper certificate
or receipt shall be furnished as evidence of such deposit,
and upon delivery of such certificate or receipt to the
court or officer admitting him to bail, he shall be ordered
to be released. Any such officer of any such municipality
authorized to receive any such deposit, in lieu of a recog-
nizance with surety, shall at the time of receiving such
deposit, advise the defendant of the place, day and hour
of his trial, and such certificate or receipt shall likewise
contain information of the place, day and hour of the
trial of such defendant.

If there be no default in the observance of the con-
ditions of the recognizance, then, upon the termination
of the proceedings, the money so deposited, shall, by
order of the trial court or justice, be refunded to the
defendant, or upon his order; but if there be any such
default, the same action shall be taken, and the same
proceedings had, with like rules governing, so far as
applicable, as if the recognizance had been with surety
instead of with cash deposit aforesaid, and the clerk or
other person having the money shall dispose of the same,
if there be a judgment of forfeiture, in the same manner
as other money received on account of forfeited recog-
nizances is required to be disposed of.

Each justice of the peace shall during the first week of
each month render under oath to the prosecuting attorney
of his county a true and complete statement of each cash
bond which he received during the preceding calendar
month and of each cash bond which is, on the date of the
report, in his possession, which statement shall also set
forth the name of the defendant, the amount of the bond
and the disposition of the same; and the failure so to do
shall be deemed a breach of his official duty.
The defendant may surrender himself at any time before default in the same manner as sureties may surrender their principal, and the money so deposited shall thereupon, by order of the court or officer to which or to whom such surrender was made, be returned to the defendant or on his order.

This section shall be deemed as authority authorizing municipalities of this state and the courts thereof to accept cash deposits in lieu of a recognizance with surety and shall be construed to authorize and empower any municipal officer, agent or official herein mentioned or as may be designated by the governing body of any municipality to receive cash deposit in lieu of a recognizance with surety, and to authorize the proper official of any municipality to receive the proceeds of any such cash deposit after the same has been forfeited as herein provided and apply the same to any proper municipal purpose as directed by the governing body thereof.

CHAPTER 40
(Com. Sub. for House Bill No. 14—Originating in the House Committee on the Judiciary)

[Passed February 14, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-five, relating to the official time for the state of West Virginia, and providing that the governor shall, by proclamation, annually designate the official time as daylight saving time.

Be it enacted by the Legislature of West Virginia:

That article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-five, to read as follows:
Article 1. The Governor.

Section 25. Designation of daylight saving time as official time.

Section 25. Designation of Daylight Saving Time as Official Time.—The governor shall, by proclamation annually, designate daylight saving time as the statewide official time, beginning on the fourth Sunday of April and terminating on the fourth Sunday in September; said time shall apply to all public schools, institutions of higher learning, agencies, departments and political subdivisions of the state.

CHAPTER 41

(Com. Sub. for House Bill No. 438—Originating in the House Committee on the Judiciary)

[Passed March 9, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections fifteen-b and fifteen-c, relating to the recordation of orders for support, maintenance or alimony and to the authority of a court in certain cases to release any lien on real estate created by virtue of any decree or order for support, maintenance or alimony under such circumstances as may appear just and reasonable to the court.

Be it enacted by the Legislature of West Virginia:

That article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections fifteen-b and fifteen-c, to read as follows:

Article 2. Divorce.

Section 15-b. Recordation of order for support, maintenance or alimony.

Section 15-c. Court may release any lien created for support, maintenance or alimony.
Section 15-b. Recordation of Order for Support, Maintenance or Alimony.—An order for support, maintenance or alimony shall not give rise to a lien on any real estate of the person against whom the order is entered until such order is entered of record in the office of the clerk of the county court where any such real estate is situate. Such order shall be recorded in the same manner as deeds of trust are recorded.

Sec. 15-c. Court May Release any Lien Created for Support, Maintenance or Alimony.—The guardian of any minor, or the committee of any insane person or convict, if he deems that the interest of his ward or insane person or convict will be promoted by a release of a lien upon real estate, created by virtue of any decree or order of the court for the support, maintenance or alimony of any person, may apply by petition, in a summary way to the court that entered such decree or order creating such lien, or such other court having jurisdiction of the parties, describing said lien, the circumstances of the minor, or insane person or convict and setting forth plainly all the facts calculated to show the propriety of the release which, if authorized, may be made upon such terms as the court deems just under all the circumstances. The petition shall be verified by the oath of the petitioner, and all persons interested shall be made defendants, and ten days' notice shall be given to such defendants before such petition may be heard.

CHAPTER 42

(House Bill No. 123—By Mr. Myles)

(Passed February 26, 1963; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section twenty-three, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to hearing before court; testimony and depositions as in
civil actions; reference to commissioner, and to amend and
reenact section twenty-five, article two of said chapter,
relating to notice by plaintiff of demand for trial in do­
mestic relations cases.

Be it enacted by the Legislature of West Virginia:

That sections twenty-three and twenty-five, article two,
chapter forty-eight of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, be amended and reen­
acted to read as follows:

**Article 2. Divorce.**

Section
23. Hearing before court; testimony and depositions as in civil actions;
reference to commissioner.
25. Notice by plaintiff of demand for trial.

Section 23. Hearing Before Court; Testimony and Depo-
sitions as in Civil Actions; Reference to Commissioner.—
Actions for divorce, annulment and separate maintenance
shall mature in the same manner as other actions pro-
vided for in the rules of civil procedure of the state of
West Virginia, and when ready for hearing under said
rules shall be tried before the court, in chambers, and all
witnesses shall appear and testify at the hearing the same
as witnesses in other civil actions. Such actions may be
heard, when matured, at any time irrespective of whether
or not there is a term of court in session. The law gov-
erning the taking and reading of depositions, as provided
for in the rules of civil procedure, shall apply to deposi-
tions in the hearing of a divorce case. The court may,
instead of proceeding with the action under this section,
refer the same to a commissioner, or a special commis-
sioner, of said court as provided for in section twenty-six
of this chapter and article.

Sec. 25. Notice by Plaintiff of Demand for Trial.—
The plaintiff shall, in every case which is to be heard
before the court, at least thirty days before the date on
which it is expected the case will be heard by the court,
give the divorce commissioner of the county, if one has
been appointed under the provisions of section twenty-
four of this article, notice in writing that a trial will be
demanded. If the plaintiff has not in the complaint stated
the residence and postoffice address of the defendant, he
shall furnish it to the divorce commissioner at the time of
giving such notice; but if the residence and postoffice ad-
dress of the defendant are unknown to the plaintiff, at the
time of giving of notice, an affidavit of this fact, by the
plaintiff, delivered to the divorce commissioner with the
notice shall be sufficient.

CHAPTER 43

(House Bill No. 96—By Mr. Speaker, Mr. Singleton,
and Mr. Seibert)

[Passed February 15, 1963; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section five, article two, chapter
eighteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the general
powers and duties of the state board of education and
public school entrance age.

Be it enacted by the Legislature of West Virginia:
That section five, 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:

Article 2. State Board of Education.

Section
5. General powers and duties; public school entrance age.

Section 5. General Powers and Duties; Public School
2 Entrance Age.—Subject to and in conformity with the
3 constitution and laws of this state, the state board of
4 education shall determine the educational policies of the
5 state, except as to the West Virginia University and
6 Potomac State School, and shall make rules for carrying
7 into effect the laws and policies of the state relating to
8 education, including rules relating to the physical wel-
9 fare of pupils, the education of feeble-minded and physi-
10 cally disabled or crippled children of school age, school
attendance, evening and continuation or part-time day schools, school extension work, the classification of schools, the issuing of certificates upon credentials, the distribution and care of free textbooks by the county boards of education, the general powers and duties of county boards of education, and of teachers, principals, supervisors and superintendents, and such other matters pertaining to the public schools of the state as may seem to the state board to be necessary and expedient.

Notwithstanding any other provision of law which may be to the contrary, and notwithstanding the rule-making powers given to the state board of education by this section, a child shall not be permitted to enter the public schools of this state in any school year, beginning with the school year one thousand nine hundred sixty-three—sixty-four, unless such child be six years of age prior to November one of such school year. The term "public schools" as used in the preceding sentence shall not be deemed to include public kindergartens.

CHAPTER 44
(Com. Sub. for Senate Bill No. 37—Originating in the Senate Committee on Education)

[Passed March 7, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the training of teachers; classification and standardization of schools; standards for degrees and diplomas.

Be it enacted by the Legislature of West Virginia:

That section six, 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:
Article 2. State Board of Education.

Section 6. Training of Teachers; Classification and Standardization of Schools; Standards for Degrees and Diplomas.—The education of teachers in the state shall be under the general direction and control of the state board of education, which shall, through the state superintendent of schools, exercise supervisory control over teacher preparation programs in all institutions of higher education, including student teaching in the public schools, in accordance with standards for program approval stated in writing by the board. To give prospective teachers the teaching experience needed to demonstrate competence, as a prerequisite to licensure, the state board of education may enter into an agreement with county boards of education for the use of the public schools. Such agreement shall recognize student teaching as a joint responsibility of the teacher preparation institution and the cooperating public schools and shall include:

1. The minimum qualifications for the employment of public school teachers selected as supervising teachers;
2. The remuneration to be paid public school teachers by the state board, in addition to their contractual salaries, for supervising student teachers; and
3. Minimum standards to guarantee adequacy of facilities and program of the public school selected for student teaching.

The student teacher, under the direction and supervision of the supervising teacher, shall exercise the authority of a substitute teacher.

The state board of education shall make rules and regulations for the accreditation, classification, and standardization of all schools in the state, except the West Virginia University, and shall determine the minimum standards for the conferring of degrees and granting of diplomas, except those conferred or granted by the West Virginia University. No institution may grant any diploma or confer any degree on any basis of work or merit below the minimum standards prescribed by the state board of education. All institutions of higher education approved for teacher preparation in the school year of
one thousand nine hundred sixty-two—sixty-three shall
continue to hold that distinction so long as they measure
up to the minimum standards for teacher preparation.
Nothing contained herein shall infringe upon the rights
generated to any institution by charter given according to
law previous to the adoption of this code.
No charter or other instrument containing the right to
confer degrees or to issue diplomas shall be granted by
the state of West Virginia to any institution, or other
associations or organizations, within the state until the
diplomas have first been approved in writing by the state
board of education.

CHAPTER 45
(House Bill No. 415—By Mr. Wilson)

[Passed March 1, 1963; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact sections four and five, article
two-a, chapter eighteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to
textbook adoption.

Be it enacted by the Legislature of West Virginia:

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

Article 2-a. Textbook Adoption.

Section 4. Execution of contracts; bond.
Section 5. Selection by county boards.

Section 4. Execution of Contracts; Bond.—When the
selection and approval of the multiple list have been
properly made, it shall be the duty of the state board to
execute contracts for the selected books with the pub-
lishers within twenty days of the approval and adoption
of the multiple list, prepare a list of the adopted books on
the multiple list and publish same, and send a copy to
each county superintendent not later than September first
of the year preceding the adoption. Such contracts for adoption, except for the introductory period in making the transition to a staggered adoption plan, shall run for four years.

Each publisher awarded a textbook contract by the state board shall enter into a bond payable to the state of West Virginia in the penal sum of not less than two thousand dollars and not more than five thousand dollars to be approved by the state board of public works, such bond to be executed as surety by some responsible surety company authorized to carry on its business in West Virginia. Such contract shall be prepared by the attorney general in accordance with the terms and provisions of this article. Such contract shall be executed in duplicate, one copy to be held by the publisher and one by the state board of education.

Bonds required of successful publishers shall provide that:

(a) The publisher will furnish any of the books on the multiple list which he publishes for the period of the adoption, from the date of the bond, to any county school unit, or to a dealer appointed by the county, at the lowest wholesale price contained in the bid, f.o.b. publisher's nearest shipping point.

(b) The publisher will automatically reduce such prices in West Virginia when prices are reduced anywhere in the United States, so that no such book shall at any time be sold in West Virginia at a higher wholesale price than received for that book elsewhere in the United States, like conditions prevailing.

(c) All books sold in West Virginia will be identical with the official samples filed with the state board of education as regards size, paper, binding, print, illustrations, subject matter, and other particulars which may affect the value of the books. The state board of education may, however, during the period of the contract approve revised editions of an adopted book or series, which will authorize a publisher to furnish such revisions.

Sec. 5. Selection by County Boards.—Textbook publishers, upon requests of county superintendents, shall
3 furnish to county boards of education the requested
4 sample copies of books that were selected and placed on
5 the state multiple list of textbooks by the state board of
6 education. The textbook publishers shall ship and bill to
7 the county boards of education at the lowest wholesale
8 prices with shipping charges prepaid. After the counties
9 have made their textbook adoptions and certified them
to the state board of education, all sample copies of books
may be returned to the publishers from whom obtained
by May first, shipping charges to be paid by the pub-
lisher. County boards may, if they elect to do so, retain
the sample books, but shall pay the publishers the low-
est wholesale prices for them.

The county board of education shall, upon recommen-
dation of the county superintendent with the aid of a
committee of teachers not to exceed five members and
not later than January first of any adoption year, select
from the state multiple list one book or series of books
for each subject and grade to be used as exclusive basal
in the county for a period of four years, except however
for the one thousand nine hundred fifty-seven adoptions
which shall be made as provided in this article.

After the county board of education has adopted the
the basal textbooks for use in the county, and not later
than January fifteenth, the county superintendent shall
send to the state board of education a complete list of
books adopted, properly certified by the president of the
county board of education, in such form as the state
board of education shall prescribe.

CHAPTER 46

(Senate Bill No. 88—By Mr. Carson, Mr. President, and
Mr. McKown)

[Passed February 21, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chap-
ter eighteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to appointment, qualifications, traveling expense, and residence of state superintendent of schools.

Be it enacted by the Legislature of West Virginia:

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

**Article 3. State Superintendent of Schools.**

Section 1. Appointment; qualifications; traveling expense; and residence of state superintendent of schools.

Section 1. Appointment; Qualifications; Traveling Expense; and Residence of State Superintendent of Schools.

- There shall be appointed by the state board of education a state superintendent of schools. He shall be a person of good moral character, of recognized ability as a school administrator, holding a master's degree in educational administration, and shall have had not less than five years of experience in public school work. He shall receive an annual salary provided by law, to be paid monthly and necessary traveling expenses, when away from the state capitol on official business, the same to be paid out of the general school fund upon warrants of the state auditor. The superintendent shall reside at the state capital and have his office there.

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**CHAPTER 47**

(Senate Bill No. 261—By Mr. McKown and Mr. Carrigan)

[Passed March 5, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to general control of schools; consolidation; transportation of pupils.
Be it enacted by the Legislature of West Virginia:

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

Article 5. District Board of Education.

Section 13. General control of schools; consolidation; transportation of pupils.

(2) Transportation of Pupils.—The boards, subject to the provisions of this chapter and the rules and regulations of the state board, shall have authority:

(1) To control and manage all of the schools and school interests of the county, including the authority to require that records be kept of all receipts and disbursements of all funds collected or received by any principal, teacher, student or other person in connection with any program, activity or other endeavor of any nature operated or carried on by or in the name of the school, or any organization or body directly connected with the school, to audit such records and to conserve such funds, which shall be deemed quasi-public moneys, including securing surety bonds by expenditure of board moneys;

(2) To establish needed high schools;

(3) To close any school which is unnecessary and to assign the pupils thereof to other schools;

(4) To consolidate schools;

(5) To close any elementary school whose average daily attendance falls below twenty pupils for two months in succession, and send the pupils to other schools in the district or to schools in adjoining districts. The compensation of teachers in schools so closed shall cease;

(6) To provide at public expense adequate means of transportation for all children of school age who live more than two miles distant from school by the nearest available road or path; and to provide at public expense and according to such regulations as the board may establish, adequate means of transportation for school children participating in athletic, literary or music activities: Provided, That in all cases the buses or other transportation
facilities owned by the board of education shall be driven
or operated only by drivers regularly employed by the
board of education: Provided, however, That buses shall
be used for extra curricular activities as herein provided
only when the insurance provided for by this section shall
have been elected;

(7) To provide at public expense for insurance against
the negligence of the drivers of school buses, trucks, or
other vehicles operated by the board; and if the transpor-
tation of pupils be let out to contract, then the contract
therefor shall provide that the contractor shall carry in-
surance against negligence in such an amount as the board
shall specify.

"Quasi-public funds" as used herein are defined as any
money received by school board employees for the benefit
of the school system as a result of curricular or non-
curricular activities.

The board of any district shall expend under such regu-
lations as it establishes for each child an amount not to
exceed the proportion of all school funds of the district
that each child would be entitled to receive if all the
funds were distributed equally among all the children of
school age in the district upon a per capita basis. No
changes in textbooks except those provided by general
law shall be made as a result of the passage of this act:
Provided, That at least one year of instruction in the his-
tory of the state of West Virginia shall be given prior to
the eighth grade.

CHAPTER 48

(Senate Bill No. 40—By Mr. Carson, Mr. President, and
Mr. McKown)

[Passed March 1, 1963; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend article five, chapter eighteen of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated sec-
tion thirty-nine, relating to the authority of the district
boards of education to establish a summer school program
in the elementary and secondary levels and to charge tui-
tion therefor.

Be it enacted by the Legislature of West Virginia:

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

Article 5. District Board of Education.

Section 39. Establishment of Summer School Programs;
Tuition.—Inasmuch as the present county school facilities
for the most part lie dormant and unused during the sum-
mer months, and inasmuch as there are many students
who are in need of remedial instruction and others who
desire accelerated instruction, it is the purpose of this
section to provide for the establishment of a summer
school program which program is to be separate and apart
from the full school term as established by each county.

The board of education of any county shall have author-
ity to establish a summer school program utilizing the
public school facilities and to charge tuition for students
who attend such summer school, such tuitions not to ex-
ceed in any case the actual cost of operation of such sum-
mer school program: Provided, That any deserving pupil
whose parents, in the judgment of the board, are unable
to pay such tuition, may attend without charge. The coun-
ty board of education shall have the authority to deter-
mine the term and curriculum of such summer schools
based upon the particular needs of the individual county.
The curriculum may include, but is not limited to, reme-
dial instruction, accelerated instruction, and the teaching
of manual arts. The term of such summer school program
may not be established in such a manner as to interfere
with the regular school term.

The county boards of education may employ as teach-
ers for this summer school program any certified teacher.
Certified teachers employed by the county board of education to teach in the summer school program shall be paid an amount to be determined by the board and shall enter into a contract of employment in such form as is prescribed by the county board of education. Any funds accruing from such tuitions shall be credited to a special fund of the county board of education which is hereby established, which fund is to be used solely to perpetuate and maintain the summer school program. The funds shall be reported each year as of June thirtieth in the manner required for other financial reports of the board.

CHAPTER 49

(House Bill No. 73—By Mr. Wilson and Mr. Given)

[Passed March 4, 1963; in effect from passage. Approved by the Governor.]

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 appointment of teachers.

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:

Article 7. Teachers.

Section 1. Appointment of Teachers; Contracts; How Terminated; Failure of Teacher to Perform Contract or Violation Thereof.

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 who holds a professional certificate, based on at least a bachelor's degree, has met the qualifications for the same, and the board of education enter into a new contract of employment, it shall be a continuing contract: Provided, however, That any teacher holding a valid certificate with less than a bachelor's degree who is employed in a county beyond the said three-year probationary period shall upon qualifying for said professional certificate based upon a bachelor's degree, if reemployed, be granted continuing contract status. The continuing contract of any teacher 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 for any teacher holding a certificate valid for more than one year and in full force and effect during the school year one thousand nine hundred sixty-two and one thousand nine hundred sixty-three shall remain in full force and effect: And provided further, That a con-
Continuing contract shall not operate to prevent a teacher's dismissal based upon the lack of need for the teacher's services pursuant to the provisions of law relating to the allocation of teachers and pupil-teacher ratios. But in case of such dismissal, the teachers so dismissed shall be placed upon a preferred list in the order of their length of service with that board, and the school board shall give due consideration of such list and order if and when vacancies or need occur. A superintendent shall not be deemed a teacher within the meaning of this paragraph.

In the assignment of position or duties of a teacher under said continuing contract, the board shall have authority to provide for released time of a teacher for any special professional or governmental assignment without jeopardizing the contractual rights of such teacher or any other rights, privileges, or benefits under the provisions of this chapter.

Any teacher who fails to fulfill his contract with the board, unless prevented from so doing by personal illness or other just cause, or unless released from such contract by the board, or who violates any lawful provision thereof, shall be disqualified to teach in any other public school in the state for a period of the next ensuing school year, and the state department of education or board may hold all papers and credentials of such teacher on file for a period of one year for such violation: Provided, however, That marriage of a teacher shall not be considered a failure to fulfill, or violation of, the contract.

CHAPTER 50

(House Bill No. 76—By Mr. Wilson and Mr. Bias)

[Passed March 9, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to amend and reenact section two, article seven, chapter eighteen of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to salaries for teachers.

Be it enacted by the Legislature of West Virginia:

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

**Article 7. Teachers.**

Section 2. Salaries for teachers; basic salaries; advanced salaries.

**Section 2. Salaries for Teachers; Basic Salaries; Advanced Salaries.—** For the purpose of this section, assistant superintendents, directors and supervisors of instruction, and elementary and secondary principals shall be defined as teachers.

County boards of education shall fix the rate of salary to be paid teachers in accordance with the following classifications and requirements:

(A) Basic salaries shall be the salaries fixed for teachers in accordance with the certification classification of the teachers. Such salaries shall be those set forth in the following schedule:

1. For teachers holding five-year certificates secured by examination or other first-grade certificates, not less than one hundred ninety-five dollars a month;
2. For teachers holding short-course certificates, not less than two hundred five dollars a month;
3. For teachers holding normal school or other certificates which required at the time of issuance at least two years of collegiate work, not less than two hundred forty-five dollars a month;
4. For teachers holding certificates which required at the time of issuance at least three years of collegiate training, not less than two hundred sixty-five dollars a month;
5. For teachers holding collegiate elementary, first-class high school, or other certificates of equal rank, based on a bachelor's degree earned in an approved institution, not less than three hundred fifty dollars a month;
(6) For teachers who have received a master's degree in an institution qualified and approved to do graduate work, or have completed the requirements therefor, holding the collegiate elementary, first-class high school, or other certificate of equal rank, not less than three hundred ninety dollars a month; and

(7) For teachers who have received a doctor's degree from an institution of university rank qualified and approved to confer the doctor's degree, holding the collegiate elementary, first-class high school, or other certificate of equal rank, at least three hundred ninety-five dollars a month.

Basic salaries shall be uniform throughout the state for teachers holding equivalent credentials.

A teacher teaching his first regular term of school shall be paid the basic salary in accordance with his certification classification.

Upon the change of the certification classification of a teacher, the basic salary of that teacher shall be that of the new certification classification.

(B) Advanced salaries shall mean any salaries greater than basic salaries. Advanced salary increments shall be the increments added to the basic salaries of teachers for experience and for such other services as recognized herein. Salary increments for teaching experience shall be those set forth in the following schedule:

(1) For teachers who hold the short course or certificate of lower grade, the rate of salary shall be the basic salary plus at least six dollars a month for the second term, and the basic salary plus an additional annual increase of at least six dollars a month for each year taught thereafter to and including the seventh year;

(2) For teachers who hold the third-class elementary (standard normal) certificate, the rate of salary shall be the basic salary plus at least six dollars a month for the second term; and the basic salary plus an additional annual increase of at least six dollars a month for each year taught thereafter to and including the ninth year;

(3) For teachers who hold the second-class collegiate certificate, the rate of salary shall be the basic salary plus
at least six dollars a month for the second term; and
the basic salary plus an additional annual increase of at
least six dollars a month for each year taught thereafter
to and including the eleventh year;

(4) For teachers who hold the collegiate elementary,
first-class high school, or other certificates of equal rank,
based on a bachelor's degree earned in an approved in-
stitution, the rate of salary shall be the basic salary plus
at least six dollars a month for the second term; and
the basic salary plus an additional annual increase of at
least six dollars a month for each year taught thereafter
to and including the fourteenth year; and

(5) For teachers who have received a master's de-
gree in an institution qualified and approved to do gradu-
ate work, holding a collegiate elementary certificate,
first-class high school, or other certificate of equal rank,
the rate of salary shall be the basic salary plus at least
six dollars a month for the second term; and the basic
salary plus an additional annual increase of at least six
dollars a month for each year taught thereafter to and
including the seventeenth year.

Boards of education may fix higher salaries for high
school and elementary school principals, teachers of one-
teacher schools, and any teacher assigned to or employed
for duties other than or in addition to his regular in-
structional duties, by the addition of further increments
consistent with the duties performed. Such additional
salary increments shall conform to the regulations of the
state board of education.

Advanced salaries shall be uniform throughout the
district for teachers holding similar credentials and in the
same classification as to experience and duties.

Upon the change of the certification classification of the
teacher, his advanced salary increments as provided in
this section shall be added to his new basic salary created
by the change in the certification classification.

In determining the number of regular terms of school
a teacher has taught, boards of education shall credit as
regular teaching, service in armed forces of the United
States in the world wars, and active work in educational
positions other than teaching, but no teacher shall be
given credit for teaching more than one regular term in
any school year.

Any board of education failing to comply with the
provisions of this section may be compelled to do so by
mandamus.

CHAPTER 51
(Senate Bill No. 264—By Mr. McKown and Mr. Carrigan)

[Passed March 7, 1963; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section ten, article seven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enumeration of children of school age.

Be it enacted by the Legislature of West Virginia:

That section ten, 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:

Article 7. Teachers.

Section 10. Enumeration of Children of School Age.—

A school census of youths from birth through twenty years of age as of September first of the year in which taken, or of such ages as otherwise may locally be determined and of mentally and physically handicapped persons of all ages, may be made during the first month of any school term as directed by a county board of education. The school census may be taken by the teachers or as otherwise directed by the county board of education. Teachers taking the school census shall be entitled to use school hours not to exceed a total of one school day, and shall be compensated for such time as for time taught.
The state superintendent of schools shall have authority to require a state-wide enumeration by the counties at such times as he may direct and may establish the procedures therefor.

In order that the census record may be as currently accurate as possible, and a reliable source of reference through the school year, it shall be the duty of each county superintendent of schools to establish and administer through the office of the county director of school attendance a system of cumulative census records which may be prescribed by the state superintendent of schools.

CHAPTER 52

(Senate Bill No. 41—By Mr. Carson, Mr. President, and Mr. McKown)

(Passed March 8, 1963; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact section fifteen, article seven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the qualifications and requirements for certification of teachers, and specifically providing for the certification of aliens to teach a foreign language in the public school system.

Be it enacted by the Legislature of West Virginia:

That section fifteen, 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:

Article 7. Teachers.

Section 15. Teacher certification; general qualifications and requirements; certification of aliens.

Section 15. Teacher Certification; General Qualifications and Requirements; Certification of Aliens.—No person employed as a teacher in the free schools of this state shall receive for such services any part of any free school
funds who does not hold a valid teaching certificate licensing him to teach in the public schools for the period of his employment and showing the grade levels and subject areas in which he is qualified to teach: Provided, That if a teacher is employed in good faith on the anticipation that he is eligible for a certificate and it is later determined that he was not eligible, the state superintendent of schools may authorize payment by the county board of education to the teacher for a time not exceeding one school month. All certificates shall expire on June thirtieth of the last year of their validity irrespective of the date of issuance. Under no circumstances shall a certificate to teach be granted to any person who is not a citizen of the United States, is not of good moral character and physically, mentally and emotionally qualified to perform the duties of a teacher and who has not attained the age of eighteen years on or before the first day of October of the year in which his certificate is issued: Provided, however, That an exchange teacher from a foreign country shall not be required to be a citizen of the United States, and a person who is not a citizen of the United States may be granted a certificate to teach a foreign language.

The term “teacher” as used in this section is intended to include the classroom teacher, school librarian, school principal, school superintendent, assistant superintendent, supervisor of instruction and other persons employed in similar positions.

CHAPTER 53
(Senate Bill No. 81—By Mr. McKown)

[Passed March 4, 1963; in effect July 1, 1963. Approved by the Governor.] AN ACT to amend and reenact sections fourteen, seventeen, twenty-three and twenty-six, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, increasing benefits in the state teachers' retirement system.
Be it enacted by the Legislature of West Virginia:

That sections fourteen, seventeen, twenty-three and twenty-six, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Article 7-a. State Teachers' Retirement System.

Section
14. Contributions by members.
17. Statement and computation of teachers service.
23. Withdrawal and death benefits.
26. Allowance upon retirement.

Section 14. Contributions by Members.—At the end of each month every member of the retirement system shall contribute four and one-half per cent of his monthly earnable compensation to the retirement board: Provided, That in no case shall the contribution of any member exceed three hundred thirty-eight dollars in any fiscal year: Provided, however, That in no case shall the contribution of any member employed by the board of governors of West Virginia University, or by the West Virginia board of education at an institution of higher education under its control, exceed two hundred sixteen dollars in any fiscal year.

Such contributions shall be deemed to include the annual supplementary fee of the contributor, determined as hereinafter provided, which fee shall be used to help finance the additional retirement benefit provided for in subsection (e), section twenty-six of this article. Annually, the contributions of each member, minus his supplementary fee, shall be credited to his account in the teachers' accumulation fund. The contributions shall be deducted from the salaries of the members as herein prescribed, and every member shall be deemed to have given his consent to such deductions. No deductions, however, shall be made from the earnable compensation of any teacher who retired because of age or service, and then resumed service as a teacher.

The retirement board shall each year determine to the nearest dollar the amount of the supplementary fee to be paid by each member, so that the sum of such fees paid
by all members shall be sufficient to defray one-half of
the cost of the retirement benefit provided for in subsec-
tion (e), section twenty-six of this article. The amount
so fixed shall not exceed twenty dollars, nor shall it in
any case exceed one-sixth of the annual contribution of
the member. All supplementary fees shall be deposited
in the benefit fund.

The aggregate of employer contributions, due and pay-
able under this article, shall equal annually the total de-
ductions from the earnable compensation of members
required by this section. All employer contributions shall
be credited to the employers' accumulation fund, from
which fund an amount equalling annually the supple-
mentary fees of members shall be transferred to the
benefit fund.

Payment by an employer to a member of the sum speci-
fied in the employment contract minus the amount of the
employee's deductions shall be deemed to be a full dis-
charge of the employer's contractual obligation as to
earnable compensation.

Each contributor shall file with the retirement board
or with the employer to be forwarded to the retirement
board an enrollment form showing his date of birth and
other data needed by the retirement board. Upon notice
from the retirement board to the employer that a con-
tributor has failed to file such forms as prescribed, the
employer shall withhold the salary of the contributor
until the needed form is filed with the retirement board.

Sec. 17. Statement and Computation of Teachers' Serv-
ice.—Under such rules and regulations as the retirement
board may adopt, each teacher shall file a detailed state-
ment of his length of service as a teacher for which he
claims credit. The retirement board shall determine what
part of a year is the equivalent of a year of service. In
computing such service, however, it shall credit no period
of more than a month's duration during which a member
was absent without pay, nor shall it credit for more than
one year service performed in any calendar year.

For the purpose of this article, the retirement board
shall grant prior service credit to new entrants and other
members of the retirement system for service in any of the armed forces of the United States in any period of national emergency within which a federal selective service act was in effect. For purposes of this section, "armed forces" shall include women's army corps, women's appointed volunteers for emergency service, army nurse corps, spars, women's reserve, and other similar units officially parts of the military service of the United States. Such military service shall be deemed equivalent to public school teaching, and the salary equivalent for each year of such service shall be the actual salary of the member as a teacher for his first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed twenty-five per cent of total service at the time of retirement.

For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of such state or territory the retirement board shall grant credit to the same extent and on the same conditions, if any, as a retirement system established for teachers in such employment would grant credit for service as a teacher in the public schools of West Virginia.

No member shall be deemed absent from service as a teacher while serving as a member of the Legislature of the state of West Virginia during any duly constituted session of that body.

If a member is not eligible for prior service credit or pension as provided in this article, then his prior service shall not be deemed a part of his total service.

A member who withdrew from membership shall be permitted to regain his former membership rights as specified in section thirteen of this article only in case he has served two years since his last withdrawal.

Subject to the above provisions, the board shall verify as soon as practicable, the statements of service submitted. The retirement board shall issue prior service certificates to all persons eligible therefore under the provisions of this article. Such certificates shall state the
length of such prior service credit, but in no case shall the prior service credit exceed forty years.

Sec. 23. Withdrawal and Death Benefits.—Benefits upon withdrawal from service prior to retirement under the provisions of this article shall be as follows:

(a) A contributor who withdraws from service as a teacher for any cause other than death or retirement shall, on demand, be paid his accumulated contributions plus refund interest up to but not including the date of his last contribution, if he is then no longer under contract, verbal or otherwise, to serve as a teacher; or

(b) If such contributor has completed twenty years of total service he may elect to receive at retirement age an annuity which shall be computed as provided in this article. The contributor must notify the retirement board in writing concerning such election.

Benefits upon the death of a contributor prior to retirement under the provisions of this article shall be paid as follows:

(1) If the contributor was at least fifty years old, and if his total service as a teacher was at least twenty-five years at the time of his death, then the surviving spouse of the deceased shall be deemed eligible for an annuity which shall be computed as though the deceased were actually a retired teacher at the time of death, and had selected a survivorship option which pays such spouse the same monthly amount which would have been received by the deceased; or

(2) If the facts do not permit payment under the preceding paragraph (1), then the following sum shall be paid to the refund beneficiary of the contributor: His accumulated contributions with refund interest up to the year of his death plus the amount of his accumulated contributions. The latter sum shall emanate from the employers' accumulation fund.

Sec. 26. Allowance upon Retirement.—Annuitants whose annuities were approved by the retirement board prior to the effective date of this act shall be paid the annuities which were approved by the retirement board.
Annuities approved by the board after the effective date of this act shall be computed as provided herein.

Upon establishment of eligibility for a retirement allowance, a member shall be granted an annuity which shall be the sum of either Plan A or Plan B, whichever provides the larger annuity.

Plan A shall be computed as follows:

(a) The actuarial equivalent of the contributions and deposits of the member in his individual account up to the time of his retirement, with regular interest.

(b) The actuarial equivalent of the contributions of the employer up to the time of the member's retirement, which shall equal the sum in subsection (a) of this section minus deposits with regular interest on such deposits.

(c) Where prior service credit has been granted, an allowance of one and one-half per cent of the member's average final salary multiplied by the number of years of prior service credited to him.

(d) The actuarial equivalent of the amounts that would have accumulated under subsections (a) and (b) of this section, if the member had contributed to his individual account until he was fifty years old, at the annual rate of his past actual contributions, but this subsection shall apply only as additional income to members who qualify for disability retirement before they are fifty years old.

(e) Twelve dollars multiplied by his total service credit as a teacher.

(f) The member shall receive in addition to the allowances under subsections (c) and (d) an amount equal to six dollars multiplied by his total service credit: Provided, That the maximum allowance under this subsection shall be one hundred and ninety-two dollars: Provided, however, That this subsection shall be effective on and after July first, one thousand nine hundred fifty-seven.

(g) Twelve dollars multiplied by the member's total service credit as a teacher.
For the purposes of subsection (c) in Plan A:

1. An allowance for prior service shall in no case exceed three-fifths of the member's average final salary.

2. Average final salary for this purpose shall in no case exceed two thousand five hundred dollars, nor shall it be less than twelve hundred dollars.

Plan B shall be computed as follows:

(a) One per cent of the member's average salary multiplied by his total service credit as a teacher. In this paragraph "average salary" shall mean the average of the highest annual salaries received by the member during any period of five consecutive years contained within his last ten years of total service credit: Provided further, That the highest annual salary used in this calculation shall be seven thousand five hundred dollars: And provided further, That the highest annual salary used in this calculation for members employed by the board of governors of West Virginia University, or by the West Virginia board of education at institutions of higher education under its control, shall be four thousand eight hundred dollars.

(b) The actuarial equivalent of the deposits of the member in his individual account up to the time of his retirement, with regular interest.

The disability annuities of all teachers retired for disability shall be based upon a disability table prepared by a competent actuary approved by the retirement board. Upon the death of an annuitant who qualified for an annuity as a surviving spouse or because of permanent disability, the estate of the deceased or beneficiary designated for such purpose, shall be paid the difference, if any, between the member's contributions with regular interest thereon, and the sum of the annuity payments. All annuities shall be paid in twelve monthly payments. In computing such monthly payments, fractions of a cent shall be deemed a cent. Such monthly payments shall cease with the payment for the month within which the beneficiary dies, and shall begin with the payment for the month succeeding the month within which the annuitant became eligible under this article for the an-
nuity granted; in no case, however, shall an annuitant receive more than four monthly payments which are retroactive after the board receives his application for annuity.

In case the retirement board receives data affecting the approved annuity of a retired teacher, the annuity shall be changed in accordance with such data, the change being effective with the payment for the month within which the board received the new data.

An annuity application shall be cancelled immediately if the applicant dies before the retirement board approves such application.

Any person who has attained the age of sixty-five and who has served at least twenty-five years as a teacher prior to July one, one thousand nine hundred forty-one, shall be eligible for prior service credit and for prior service pensions as prescribed in this section.

CHAPTER 54
(Com. Sub. for Com. Sub. for Senate Bill No. 69—Originating in the Senate Committee on Finance.)

[Passed March 5, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to amend article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-six-a, relating to supplemental benefits for retired teachers.

Be it enacted by the Legislature of West Virginia:

That article seven-a, 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 twenty-six-a, to read as follows:

Article 7-a. State Teachers’ Retirement System.

Section 26-a. Additional benefits for certain annuitants.
Section 26-a. Additional Benefits for Certain Annuities.—Annuitants whose annuities were approved by the retirement board on or before December eighteen, one thousand nine hundred sixty-two, shall, upon written application, receive in addition to such approved annuities a monthly allowance computed as follows: The annuitant’s years of service shall be multiplied by thirty dollars and this product shall then be divided by his monthly retirement allowance, as computed prior to the above stated date, excluding any portion of said allowance which is based on voluntary deposits of the annuitant.

CHAPTER 55

(House Bill No. 425—By Mr. Christian, of McDowell, and Mr. Blankenship)

[Passed March 4, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the duties of school attendance directors.

Be it enacted by the Legislature of West Virginia:

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

Article 8. Compulsory School Attendance.

Section 4. Duties of attendance director; assistant directors of attendance.

Section 4. Duties of Attendance Director; Assistant Directors of Attendance.—The county attendance director and his assistants shall diligently promote regular school attendance. They shall ascertain reasons for inexcusable absences from school of pupils of compulsory school age as defined under this article, and shall take such steps as are, in their discretion, best calculated to
correct attitudes of parents and pupils which result in absences from school even though not clearly in violation of law.

If it is found that absence from school is in violation of law, the attendance director or assistant, in the case of first offense that school year, shall serve written notice to the parent, guardian, or custodian of such child that the attendance of such child at school is required; and if the parent, guardian, or custodian does not comply with the provisions of this article, then the attendance director or assistant shall make complaint against such parent, guardian or custodian before a justice of the peace of the county: Provided, That for a subsequent offense in any school year no such notice shall be required. The summons to appear before the justice of the peace may be served upon the parent, guardian, or custodian by the county attendance director or assistant or by any officer qualified to serve such summons.

When any doubt exists as to the age of a child absent from school, the attendance director shall have authority to require a properly attested birth certificate or an affidavit from the parent, guardian or custodian of such child, stating age of such child. The county attendance director or assistant, shall in the performance of his duties, have authority to take without warrant any child absent from school in violation of the provisions of this article and to place such child in the school in which such child is or should be enrolled.

The county attendance director shall devote full time to his duties as a school official and shall be responsible under direction of the county superintendent for the efficient administration of school attendance in his county. In addition to those duties directly relating to the administration of attendance, the county attendance director and assistant directors shall also perform the following duties:

(a) Assist in directing the taking of the school census to see that it is taken at the time and in the manner provided by law;

(b) Advise with principals and teachers on the com-
parison of school census and enrollment for the detection of possible non-enrollees;
(c) Cooperate with existing state and federal agencies charged with enforcement of child labor laws;
(d) Prepare a report for submission by the county superintendent to the state superintendent of schools on school attendance, at such times and in such detail as may be required; also, file with the county superintendent and county board of education at the close of each month a report showing activities of the school attendance office and the status of attendance in the county at the time;
(e) Promote attendance in the county by the compilation of data for schools and by furnishing suggestions and recommendations for publication through school bulletins and the press, or for such purposes as the county superintendent may direct;
(f) Participate in school functions such as parent-teacher associations, civic meetings, club meetings, and teachers' conferences; and
(g) Assist in such other ways as the county superintendent may direct for improving school attendance.

CHAPTER 56
(Senate Bill No. 263—By Mr. McKown and Mr. Carrigan)

[Passed March 6, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compulsory education of deaf and blind; offenses; penalties; enumeration of deaf and blind.

Be it enacted by the Legislature of West Virginia:
That section ten, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
Chapter 56: Education and Educational Institutions

Article 8. Compulsory School Attendance.

Section 10. Compulsory Education of Deaf and Blind; Offenses; Penalties; Enumeration of Deaf and Blind.

Every parent, guardian or other person having control of any mentally normal minor over six years of age, who is defective in sight or hearing to the extent that he cannot be benefited by instruction in the public schools, shall be required to send such minor to the West Virginia schools for the deaf and the blind at Romney. Such minor shall continue to attend such schools for a term of at least thirty-six weeks each year until he has completed the course of instruction prescribed for such schools by the state board of education, or has been discharged by the superintendent of said school.

Any such deaf or blind minor shall be exempt from attendance at said schools for any of the following reasons: (a) Instruction by a private tutor or in another school approved by the state board of education for a time equal to that required by the first paragraph of this section; (b) physical incapacity for school work; (c) any other reason deemed good and sufficient by the superintendent of such schools, with the approval of the state board of education.

Any parent, guardian or other persons in charge of such minor or minors who fails or refuses to comply with the requirements of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten nor more than thirty dollars for each offense. Failure for the period of one week within the school year to send such minor to school shall constitute an offense: Provided, That the time necessary for such minor to travel from his home to the school shall not be counted as time absent from school.

Any person who induces or attempts to induce such blind or deaf minor to absent himself from school, or who employs or harbors such minor unlawfully, while said school is in session, shall be guilty of a misdemeanor, and,
37 upon conviction thereof, shall be fined not less than twenty
38 nor more than fifty dollars for each offense.
39 It shall be the duty of school attendance directors and
40 assistants, prosecuting attorneys, and any special attend-
41 ance directors appointed by said school for the deaf and
42 the blind to enforce the provisions of this section.
43 The county superintendent of schools shall furnish to
44 the superintendents of the state supported schools for the
45 deaf and/or blind and to the state superintendent of
46 schools the names of persons in his county between the
47 ages of six and twenty-one reported to him to be deaf and
48 blind with the names and addresses of their parents or
49 guardians.

CHAPTER 57

(House Bill No. 74—By Mr. Wilson and Mr. Gentile)

[Passed March 9, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to amend and reenact sections two, eight and twelve,
article nine-a, chapter eighteen of the code of West Vir­
ginia, one thousand nine hundred thirty-one, as amended,
relating to state and county support of schools.

Be it enacted by the Legislature of West Virginia:

That sections two, eight and twelve, article nine-a, chapter
eighteen of the code of West Virginia, one thousand nine hun-
dred thirty-one, as amended, be amended and reenacted to
read as follows:

Article 9-a. Allocation of State Aid for Schools.

Section

2. Definitions.
8. Foundation program allowance for transportation.
12. Supplemental instructional support.

Section 2. Definitions.—For the purposes of this article:

2 "State board" or "board" means the state board of
3 school finance.
"County board" means a county board of education.

"Teacher" means any person, except the county superintendent and assistant superintendents, who is required to hold an authorized teaching certificate for employment in any county of the state, and who devotes the majority of his school time to the instruction of school age children.

"Standard term" means nine months of school.

"Employment term" means nine and one-half months of employment.

"Average annual foundation salary for teachers," based on the standard term, means the sum of the basic foundation salary, which for this purpose shall be determined on the same certification classification as provided in item (A), section two, article seven of this chapter, and in accordance with the numerical subsections of said section at the following rate of each class under said numerical subsections: (1) $165, (2) $175, (3) $200, (4) $210, (5) $260, (6) $285, (7) $290; plus the advanced-salary experience increment of six dollars per month times the years of allowable experience under each classification in section two of said article seven, for all full time teachers employed in a county at the end of the third month of the current year divided by the total number of such teachers.

"Net enrollment" means the number of pupils enrolled in grades one to twelve, inclusive, of the public schools of the county at the close of the third month of the current school year, but no pupil shall be counted more than once by reason of transfer within the county or from another county within the state, and no pupil shall be counted who attends school in this state from another state.

"High school" means a school consisting only of grades above the sixth, organized for instruction by departments, or the seventh and eighth grades of a school in which these grades are organized for instruction by departments and which has at least four teachers in these grades.

"Levies for general current expense purposes" means on each hundred dollars of valuation, nineteen and six-tenths cents on class one property, thirty-nine and two-
tenths cents on class two property, and seventy-eight and
four-tenths cents on classes three and four property.

Sec. 8. Foundation Program Allowance for Transportation.—The allowance in the foundation school program
of each county for transportation for the next fiscal year
shall be computed as follows:

From data for the third month of the current school
year, the state board shall determine for each county
the average number of pupils transported per mile of
bus route one way in county-owned buses and in con-
tract buses by dividing the total number of pupils sched-
uled to ride such buses on regularly scheduled routes
each day by the total length one way of all regularly
scheduled bus routes traveled by such buses. The allow-
ance of the county for such transportation shall be the
average number of pupils transported per mile of bus
route one way, so determined, multiplied by the annual
allowance per pupil provided for in the following scale:

<table>
<thead>
<tr>
<th>Number of Pupils Transported Per Mile of Bus Route One Way</th>
<th>Annual Allowance Per Pupil</th>
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<tbody>
<tr>
<td>2.59—and less</td>
<td>$44.05</td>
</tr>
<tr>
<td>2.60—2.69</td>
<td>42.58</td>
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<tr>
<td>2.70—2.79</td>
<td>41.30</td>
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<td>2.80—2.89</td>
<td>40.10</td>
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<tr>
<td>2.90—2.99</td>
<td>39.00</td>
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<tr>
<td>3.00—3.09</td>
<td>38.05</td>
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<td>3.10—3.19</td>
<td>37.10</td>
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<td>3.20—3.29</td>
<td>36.20</td>
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<td>3.30—3.39</td>
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<td>3.40—3.49</td>
<td>34.50</td>
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<tr>
<td>3.50—3.59</td>
<td>33.85</td>
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<tr>
<td>3.60—3.69</td>
<td>33.20</td>
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<td>3.70—3.79</td>
<td>32.55</td>
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<td>3.80—3.89</td>
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<td>3.90—3.99</td>
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<tr>
<td>4.40—4.49</td>
<td>29.15</td>
</tr>
<tr>
<td>4.50—4.59</td>
<td>28.70</td>
</tr>
</tbody>
</table>
Whenever it appears to the satisfaction of the board that average transportation costs per pupil in the state have increased or decreased five per cent or more as compared with the scale of annual transportation allowance per pupil used in computing the foundation program for the previous year, the board may recompute the scale to determine justifiable increases or decreases in such allowances.

The board shall determine the state average annual cost per pupil paid during the previous school year by all county boards of education for public utility transportation and for aid in lieu of transportation. On the basis of data for the third month of the current school year, each county shall then be allowed the sum of the amounts computed by multiplying the number of pupils reported by the county in each such category by the state average annual cost per pupil in that category.

The sum of the amounts allowed each county under the provisions of this section shall be the total transportation allowance for the county in its foundation school program for the next fiscal year.

Sec. 12. Supplemental Instructional Support.—The provisions of this section are designed to strengthen the instructional program by attracting to and keeping qualified teachers in the public school classrooms, by extending the employment term of teachers so as to provide time for more class instruction, time for inservice improvement in teachers' competency, and time for teacher-pupil-parent conferences.

Beginning with the fiscal year one thousand nine hundred sixty-three, the allocation of state funds for supplemental instructional support shall be an amount required to pay the difference between the foundation salary as defined in section two of this article and the minimum basic and advanced salary as defined in section two, article seven of this chapter for each teacher employed within the county for the applicable employment term.
AN ACT to amend and reenact section four, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to computation of local share and appraisal and assessment of property.

Be it enacted by the Legislature of West Virginia:

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

Article 9-a. Allocation of State Aid for Schools.

Section 4. Computation of Local Share; Appraisal and Assessment of Property.

On the basis of the most recent survey of property valuations in the state, completed as to all classes of property in all counties determined by the tax commissioner under present or former provisions of this article, the state board shall for each county compute by application of the levies for general current expense purposes, as defined in section two of this article, the amount of revenue which such levies would produce if levied upon one hundred per cent of the appraised value of each of the several classes of property contained in the report or revised report of such value, made to it by the tax commissioner as follows: (1) The state board shall first take ninety-seven and one-half per cent of the amount ascertained by applying these rates to the total assessed public utility valuation in each classification of property in the county. (2) The state board shall then apply these rates to the appraised value of other property in each classification in the county as determined by the tax commissioner and shall deduct therefrom five per cent as an allowance for the usual losses in collections due to dis-
counts, exonerations, delinquencies and the like. Fifty per cent of the amount so determined shall be added to the ninety-seven and one-half per cent of public utility taxes computed as provided above and this total shall be the local share of the particular county.

The tax commissioner shall make or cause to be made an appraisal in the several counties of the state of all non-utility real property and of all nonutility personal property which shall be based upon true and actual value as set forth in article three, chapter eleven of this code. In determining the value of personal property—other than all machinery, equipment, furniture and fixtures of any industrial plant, mine, quarry or installation and of any commercial, industrial, or professional establishment—the tax commissioner shall prescribe accepted methods of determining such values. The tax commissioner shall in accordance with such methods determine the value of such property.

For the purpose of appraising commercial, industrial, and professional properties the tax commissioner after consultation with the county court shall employ a competent property appraisal firm or firms which appraisals shall be under his supervision and direction.

In making or causing to be made such appraisal, the tax commissioner shall employ such assistants as available appropriations will permit and shall prescribe and use such accepted methods and procedures for checking property values and determining the amount of property in the several classes of property provided by law as are customarily employed for appraisal purposes.

Such appraisal of all said property in the several counties shall be completed prior to the first day of July, one thousand nine hundred sixty-six. Each year after the completion of the property appraisal in a county the tax commissioner shall maintain the appraisal by making or causing to be made such surveys, examinations, audits, maps and investigations of the value of the several classes of property in each county which should be listed and taxed under the several classifications, and shall determine the appraised value thereof. On the basis of infor-
mation so ascertained, the tax commissioner shall an-
nually revise his reports to the Legislature and to the state
board concerning such appraisals, such reports to be made
not later than the first day of January of each year.

As information from such appraisal of property in a
county under the provisions of this section becomes avail-
able for a district, municipality and county, the tax com-
missioner shall notify the county court and the assessor
of said county that such information is available and shall
make available to said county court and assessor all data,
records, and reports or other information relating to said
work, along with a list of any properties in said district,
municipality, and county which are entered on the assess-
ment rolls but for which no appraisal has been made, a
list of any properties which were appraised but which can-
not be found on the assessment rolls and a list of all prop-
erties carried on the assessment rolls which have not been
identified on the maps. Said lists shall set forth the name
of the owner and a description of the property and the rea-
son, if known, for its failure to have been entered on the
assessment rolls or to have been appraised or to have been
identified on the map, as the case may be.

As such appraisal of property in a county, under this
section, is completed to the extent that a total valuation
for each class of property can be determined, such ap-
praisal shall be delivered to the assessor and the county
court, and in each assessment year commencing after such
appraisal is so delivered and received, the county assessor
and the county court, sitting as a board of equalization and
review, shall use such appraised valuations as a basis for
determining the true and actual value for assessment pur-
poses of the several classes of property. The total assessed
valuation in each of the four classes of property shall be
not less than fifty per cent nor more than one hundred
per cent of the appraised valuation of each said class of
property: Provided, That, (1) until the completion of
the appraisal herein provided for in all fifty-five counties
of the state; and (2) upon completion of the appraisal of
any county and delivery of the appraised valuations to
the county by the tax commissioner; and (3) when it shall
appear that the total assessed valuations of any class of
property in such county are less than fifty per cent of
the total appraised valuations of such class of property;
then in such events the tax commissioner may authorize
a total assessed valuation in each such class of less than
fifty per cent of the total appraised valuation of such
class of property; except that such authorized total
assessed valuation shall be increased each year thereafter,
as nearly as practicable in equal steps, so that in the third
assessment year after the delivery of the appraised valu-
ations in each class of property, as required above, the
total assessed valuation of each class of property shall
be not less than fifty per cent nor more than one hundred
per cent of the appraised valuation of each class of prop-
erty as delivered by the tax commissioner: Provided fur-
ther, That, upon the tax commissioner's delivery of the
appraised valuation to a county, such appraised val-
atations shall serve as the basis for the spot check appraisal
in said county until all of the fifty-five counties of the
state have been reappraised.

The determination of appraised values in those counties
where the full appraisal has not been completed as de-
fined above and delivered to the assessor and the county
court prior to the first day of the assessment year shall be
continued by the tax commissioner on the annual spot
survey basis. Beginning with the fiscal year one thousand
nine hundred sixty and for each year thereafter until the
full survey is so completed and delivered in a county, the
assessed value in each of the four classes of property in
such county shall be not less than fifty per cent nor more
than one hundred per cent of the appraised valuation of
each said class of property as determined by the last pre-
vious statewide report of the tax commissioner: Provided,
however, That in those counties where the full appraisal
has not been completed and delivered, as aforesaid, to the
county assessor and the county court prior to the first day
of the assessment year, the requirements of this para-
graph shall be satisfied if:

(1) The total tax yield from the four classes of prop-
erty based upon the allowable school levy rates defined in
section two of this article equals or exceeds the amount
required to meet the local share as provided in this section; or

(2) For the assessment year one thousand nine hundred sixty-one, the assessor has increased the total valuations of property in an amount not less than thirty-three and one-third per cent of the difference between the total assessed valuations for the assessment year one thousand nine hundred sixty and the valuations required by this section; or

(3) For the assessment year one thousand nine hundred sixty-two, the assessor has increased the total valuations of property in an amount not less than fifty per cent of the difference between the total assessed valuations of property for the assessment year one thousand nine hundred sixty-one and the total valuations for such class required by this section; or

(4) For the assessment year one thousand nine hundred sixty-three, the assessor has increased the total valuation of property so that the same meet the requirements of this section.

Whenever in any year a county assessor and/or county court shall fail or refuse to comply with the provisions of this section in setting the valuations of property for assessment purposes in any class or classes of property in the county, the state tax commissioner shall review the valuations for assessment purposes made by the county assessor and the county court and shall direct the county assessor and county court to make such corrections in the valuations as may be necessary so that they shall comply with the requirements of chapter eleven and of this section and the tax commissioner shall enter the county and fix the assessments at the required ratios. Refusal of the assessor and/or the county court to make such corrections shall constitute grounds for removal from office.

In any year in which the total assessed valuation of a county shall fail to meet the minimum requirements above set forth, the county court of such county shall allocate for such year to the county board of education from the tax levies allowed to the county court a sufficient portion of its levies as will, when applied to the valuations
for assessment purposes of such property in the county, provide a sum of money equal to the differences between the amount of revenue which will be produced by application of the allowable school levy rates defined in section two of this article upon the valuations for assessment purposes of such property and the amount of revenue which would be yielded by the application of such levies to fifty per cent of the total of appraised valuations of such property. In the event the county court shall fail or refuse to make the reallocation of levies as provided for herein, the county board of education, the tax commissioner, the state board of school finance, or any other interested party, shall have the right to enforce the same by writ of mandamus in any court of competent jurisdiction.

In conjunction with and as a result of the appraisal herein set forth the tax commissioner shall have the power and it shall be his duty, to establish a permanent records system for each county in the state, consisting of:

1. Tax maps of the entire county drawn to scale or aerial maps, which maps shall indicate all property and lot lines, set forth dimensions or areas, indicate whether the land is improved, and identify the respective parcels or lots by a system of numbers, or symbols and numbers, whereby the ownership of such parcels and lots can be ascertained by reference to the property record cards and property owner's index;

2. Property record cards arranged geographically according to the location of property on the tax maps, which cards shall set forth the location and description thereof, the acreage or dimensions, description of improvements, if any, the owner's name, address and date of acquisition, the purchase price, if any, set forth in the deed of acquisition, the amount of tax stamps, if any, on the deed, the assessed valuation, and the identifying number or symbol and number, shown on the tax map;

3. Property owner's index consisting of an alphabetical listing of all property owners, setting forth brief descriptions of each parcel or lot owned, and cross-indexed with the property record cards and the tax map.
The tax commissioner is hereby authorized and empowered to enter into such contracts as may be necessary, and for which funds may be available, to establish the permanent records system herein provided for, or may through his staff and employees, prepare and complete such system.

All microfilm, photography and original copies of tax maps created under the provisions of this section are the property of the state of West Virginia and the reproduction, copying, distribution or sale of such microfilm, photography or tax maps or any copies thereof without the written permission of the state tax commissioner is prohibited. Any person who shall violate the provisions of this paragraph shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than three hundred dollars or imprisoned for not less than thirty days nor more than one year, or both, in the discretion of the court. Justices of the peace shall have concurrent jurisdiction with other courts having jurisdiction for the trial of all misdemeanors arising under this paragraph.

The tax commissioner shall by uniform regulations establish a procedure for the sale of reproduction of microfilm, photography and maps and may pay for having such reproductions made from the appropriation for “Property Appraisal”. Any funds received as a result of the sale of such reproductions shall be deposited to the appropriated account from which the payment for reproductions is made.

The cost of conducting the appraisal herein provided for shall be borne jointly by the state and the several counties in the following manner and terms: There shall be appropriated from the general revenue fund not less than one million five hundred thousand dollars for each fiscal year until sufficient funds have been appropriated to complete the appraisal in all counties of the state. Each county shall furnish, through its county court, not more than ten per cent of the cost of such appraisal or reappraisal and permanent records system for such county. Such county costs may be paid over a period of three years with the approval of the tax commissioner. In those
instances where the cost of the appraisal, reappraisal, or permanent records system required by this section has been paid by the tax commissioner from funds appropriated for these purposes, the share of such cost allocated to each county shall, upon receipt thereof by the tax commissioner, be deposited to the appropriated account from which such payments have been made. If a county has employed a professional appraisal firm to conduct an appraisal or reappraisal of all or a part of nonutility property within the past five years, and such appraisal, or any other appraisal or reappraisal has been or shall have been accepted by the tax commissioner, credit shall be allowed to such county for its portion of the statewide appraisal costs and any contract with appraisal firm or firms shall not be made for appraisal or reappraisal of such property except and unless requested by such county, or shown to be necessary by the tax commissioner: Provided, That until the completion of the appraisal herein provided for in all of the fifty-five counties of the state, the local share for each county shall be determined on the basis of the annual spot survey of property valuations by the tax commissioner in this state, as heretofore provided, but in no way shall this be interpreted as affecting the assessment provisions set forth above; however, in any county having accepted and used appraised valuations developed by an appraisal made by the tax commissioner or accepted by him as a basis in determining the true and actual valuation for assessment purposes, the county board of education may annually request that the local share shall be that which was in effect under the last applicable spot survey preceding such acceptance and usage and until the full reappraisal has been completed in all counties the board of school finance shall comply with such request: Provided further, That the sample pieces of property employed in making the annual spot survey shall be used by the tax commissioner for this purpose only and shall be open to none other than the Legislature by its request through a resolution approved by both the senate and the house of delegates and as otherwise provided in this section; however, if on the basis of the current statewide report of the tax commissioner available the first
day of January of each year, it appears that any county
shall not have complied with the requirements regarding
the ratio of assessed valuations, the tax commissioner
shall notify the assessor and the county court of each such
county and, if they file a request for review of the ap-
praisals which they believe to be in error, he shall review
the appraisal of such properties and shall correct such
ersors as he may discover in such individual appraisal
and/or in the preparation or recording of the report by
the tax commissioner. The corrected figures shall be re-
ported to the board of school finance prior to the first day
of June and shall be used in determining the allocations
of state aid to the county boards of education for the sub-
sequent fiscal year.

The county assessor and the county court shall comply
with the provisions of chapter eleven of this code in de-
termining the true and actual value of property for as-
essment purposes and shall not arbitrarily use a direct
percentage application to the appraised valuations (wheth-
er complete appraisal or spot survey) of any class of prop-
erty or property within a class for such purpose.

The provisions of this section shall not be construed to
alter or repeal in any manner the provisions of chapter
eleven of this code, but shall be construed in pari materia
therewith, and compliance with this section by the as-
soever and county court shall be considered, pro tanto, as
compliance with said chapter eleven.

CHAPTER 59
(House Bill No. 231—By Mr. Speaker, Mr. Singleton, and
Mr. Sionaker)

[Passed February 23, 1963; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section eight, article eleven,
chapter eighteen, and article eight, chapter nineteen of
the code of West Virginia, one thousand nine hundred
thirty-one, as amended, all relating to the operation and
program of the cooperative extension service of West Vir-
ginia university and to the employment, duties and responsi-
sibilities of county extension agents and other extension
service employees.

Be it enacted by the Legislature of West Virginia:

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

Chapter
18. EDUCATION.
19. AGRICULTURE.

CHAPTER 18. EDUCATION

Article 11. West Virginia University.

Section
8. Cooperative extension service; code references to agricultural ex-
tension service, etc., construed to refer to cooperative extension
service, etc.

Section 8. Cooperative Extension Service; Code Refer-
tences to Agricultural Extension Service, etc., Construed
to Refer to Cooperative Extension Service, etc.—In order
to promote the advancement of agriculture, home econom-
ics and forestry within the state, and in order to promote
general economic development and improvement of cul-
tural and social life among the people of the several com-
munities, counties and areas of the state, the agricultural
extension division heretofore created and established at
West Virginia University shall be continued and shall
hereafter be known as the “Cooperative Extension Serv-
ice”. Activities of the cooperative extension service shall
be conducted under such rules, regulations and methods as
may be approved by the board of governors. Such activi-
ties may include: (1) Organize and extend assistance to
youth and adult groups which have for their objective the
development of human and natural resources, (2) prepare
and distribute educational materials for the advancement
of knowledge, particularly in agriculture, forestry, home
economics and area and community development, and (3)
in cooperation with school officials and the United States
department of agriculture, conduct programs in group
planning and action to assist community, county, regional
and state groups in the attainment of the above objectives under the direction of local and volunteer leadership.

Within the limits of funds available for the purpose from federal, state or other sources, the board of governors shall employ such county extension agents and other extension personnel as may be needed to accomplish the purposes outlined in this section. All extension workers employed under the provisions of this section, or as provided in article eight, chapter nineteen of this code, shall be supervised and trained by the cooperative extension service to promote and advance the economic, cultural and social interests of the people in the respective areas to which they are assigned.

All provisions of this code in reference to the agricultural extension division, to county agricultural agents, to county home demonstration agents, and to other agricultural extension workers shall hereafter be construed to refer to the cooperative extension service and to the extension workers provided for in this section.

CHAPTER 19. AGRICULTURE

Article 8. Cooperative Extension Workers.

Section

1. County extension service committee; composition; organization; duties and responsibilities generally; employment and compensation of extension workers.

2. Appropriations to be expended in conformity to “Smith-Lever Act”.

3. Duties of county extension workers; extension service to cooperate.

Section 1. County Extension Service Committee; Composition; Organization; Duties and Responsibilities Generally; Employment and Compensation of Extension Workers.—The county extension service committee shall be composed of (a) the president of the county farm bureau, (b) the president of the county home demonstration council, (c) the president of the county Four-H leaders' association, (d) a county commissioner designated by the president of the county court, (e) a member of the county board of education designated by the president of the county board of education, (f) a county representative of the grange, and (g) two members who are residents of the county to be appointed by the board of governors of West
Virginia University for staggered terms of three years each beginning on the first day of July, and in making these appointments the board of governors shall appoint one member designated by any other active farm organization in the county not already represented by virtue of this section. If any of the above-named organizations do not exist in the county, the board of governors of West Virginia University may appoint an additional member for each such vacancy. The committee shall annually elect from its membership a chairman and a secretary.

It shall each year be the duty and responsibility of the county extension service committee:

1. To enter into a memorandum of agreement with the cooperative extension service of West Virginia University for the employment of county cooperative extension workers.

2. To prepare a memorandum of agreement with the county court and with the county board of education for their financial support of extension work.

3. To give guidance and assistance in the development of the county cooperative extension service program and in the preparation of the annual plan of work for the county.

Such county cooperative extension service committee may on or before the first day of July of each year file with the county court a written memorandum of agreement with the cooperative extension service of West Virginia University for the employment for the next fiscal year of county extension agents, home demonstration agents, associate or assistant agents, and clerical workers.

The county cooperative extension service committee may also file on or before the first day of July of each year with the county board of education a written memorandum of agreement with the cooperative extension service of West Virginia University for the employment for the next fiscal year of Four-H club or youth development agents, associate or assistant agents, and clerical workers.

If such agreement or agreements are so filed, the county court and the county board of education of such county, or either of them, may annually enter into such agreement or agreements for the employment for the next fiscal year of
such county extension agents, home demonstration agents, Four-H club or youth development agents, associate or assistant agents, and clerical workers, or any of them, as may be nominated by the cooperative extension service of West Virginia University, and approved in writing by at least five members of the county extension service committee.

Salaries and expenses of all such county extension workers shall be paid by the cooperative extension service, the county court, and the board of education, or jointly out of such appropriations as are made by the Legislature, the county court, and the board of education, separately or in conjunction with such federal acts as do now, or may hereafter provide funds for such purpose.

That part of salaries, travel and general office expense to be provided by the county court according to the approved memorandum shall be paid from general county funds.

Sec. 2. Appropriations to Be Expended In Conformity to “Smith-Lever Act”.—All moneys levied or appropriated by the county court or the county board of education under this article shall be expended upon orders of the county court or board of education as other such county funds are expended, and a duplicate of all salary vouchers and expense accounts shall be filed with the cooperative extension service of West Virginia University in such form as will comply with the provisions of the act of Congress approved May eighth, one thousand nine hundred fourteen, known as the “Smith-Lever Act”, or any act of Congress amendatory thereof or supplementary thereto, but no part of any money so appropriated shall be used to compensate any representative of West Virginia University or any other person, except the persons employed under this article.

Sec. 3. Duties of County Extension Workers; Extension Service to Cooperate.—Under the supervision of the cooperative extension service of West Virginia University, it shall be the duty of each county extension worker to promote, through various educational programs, the improvement and advancement of agriculture, forestry and home economics, and the general economic, cultural and
social life of the people in the respective areas to which they are assigned. It shall also be the duty of the co-operative extension service of West Virginia University to cooperate with each county court and each county board of education appropriating money under this article.

CHAPTER 60

(Senate Bill No. 143—By Mr. Moreland)

[Passed February 28, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-five, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend article two of said chapter, by adding thereto a new section, designated section twenty-two, relating to the acquisition, construction, financing and regulation of parking facilities at West Virginia University, Marshall University and other institutions of higher learning.

Be it enacted by the Legislature of West Virginia:

That section twenty-five, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, be amended by adding thereto a new section, designated section twenty-two, to read as follows:

Article

2. State Board of Education.
11. West Virginia University.

Article 2. State Board of Education.

Section

22. Acquisition, construction, financing and regulation of parking facilities.

Section 22. Acquisition, Construction, Financing and Regulation of Parking Facilities.—The state board of education is hereby authorized to construct, maintain and operate automobile parking facilities on the campus or
other areas of Marshall University and other state colleges under its jurisdiction for the use by students, faculty, staff and visitors. Such facilities shall be regulated by said state board of education and shall be financed by revenue bonds as authorized for similar facilities in section twenty-five, article eleven, chapter eighteen of this code. The state board of education is hereby specifically authorized and empowered to do and perform any and all things needful and necessary to accomplish the purpose of this section subject only to the provisions of the said section twenty-five, article eleven, chapter eighteen.

Article 11. West Virginia University.

Section 25. Acquisition, construction, financing and regulation of parking facilities.

Section 25. Acquisition, Construction, Financing and Regulation of Parking Facilities.—The board of governors is hereby authorized to construct, maintain and operate automobile parking facilities on the campus or other areas under its jurisdiction for use by students, faculty, staff and visitors. Such facilities shall be open to use on such terms and subject to such reasonable regulations as may be prescribed by the board. A summary of the regulations shall be posted conspicuously in each parking area.

Whenever a vehicle is parked in any university parking facility in violation of the posted regulations, the board shall have authority to remove the vehicle, by towing or otherwise, to an established garage or parking lot for storage until called for by the owner or his agent. The owner shall be liable for the reasonable cost of such removal and storage, and until payment of such cost the garage or parking lot operator may retain possession of the vehicle subject to a lien for the amount due. Notice to this effect shall be posted conspicuously in each parking area. The garage or parking lot operator may enforce his lien for towing and storage in the manner provided in section fourteen, article eleven, chapter thirty-eight of this code for the enforcement of other liens.

The board shall have authority to charge fees for the use of parking facilities under its control. All moneys collected for such use shall be paid into a special fund...
which is hereby created in the state treasury. The moneys in such fund shall be used first to pay the cost of maintaining and operating such facilities, but any excess not needed for this purpose may be used to finance the construction of additional parking facilities or the acquisition by lease or purchase of additional parking areas. The board may use the moneys in such special fund to finance the costs of the above purposes on a cash basis, or may from time to time issue revenue bonds of the state as provided in this section to finance such costs and pledge all or any part of the moneys in such special funds for the payment of the principal of and interest on such revenue bonds, and for reserves therefor. Whenever parking facilities are provided in any university building financed in whole or in part by the issue of revenue bonds otherwise authorized by law, the net revenue derived from the parking facilities included in such building may be used or pledged to meet the sinking fund requirements of the bonds issued for construction of the building. The pledge of moneys in such special fund for any revenue bonds shall be a prior and superior charge on such special fund over the use of any of the moneys in such fund to pay for the cost of any of such purposes on a cash basis.

Such revenue bonds may be authorized and issued from time to time by the board of governors to finance in whole or in part the purposes provided in this section in an aggregate principal amount not exceeding the amount which the board shall determine can be paid as to both principal and interest and reasonable margins for a reserve therefor from the moneys in such special fund.

The issuance of such bonds shall be authorized by a resolution adopted by the board, and such revenue bonds shall bear such date or dates, mature at such times not exceeding forty years from their respective dates; bear interest at such rate or rates not exceeding five per centum per annum; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding one hundred five per centum of the principal
amount thereof; and shall have such other terms and provisions as the board shall determine. Such revenue bonds shall be signed by the governor and by the president of the board of governors, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of the president of the board. Such revenue bonds shall be sold in such manner as the board may determine to be for the best interests of the state, such sale to be made at a price not lower than a price which will show a net return of not more than six per centum per annum to the purchaser upon the amount paid therefor computed to the stated maturity dates of such revenue bonds without regard to any right of prior redemption.

The board may enter into trust agreements with banks or trust companies, within or without the state, and in such trust agreements or the resolutions authorizing the issuance of such bonds may enter into valid and legally binding covenants with the holders of such revenue bonds as to the custody, safeguarding and disposition of the proceeds of such revenue bonds, the moneys in such special fund, sinking funds, reserve funds, or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds under the provisions of this section; and as to any other matters or provisions which are deemed necessary and advisable by the board in the best interests of the state and to enhance the marketability of such revenue bonds.

Such revenue bonds shall be and constitute negotiable instruments under the law merchant and the negotiable instruments law of the state; shall, together with the interest thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof; and such revenue bonds shall not be deemed to be obligations or debts of the state, and the credit or taxing power of the state shall not be pledged therefor, but such revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.
AN ACT to amend and reenact sections one, two, three and five, article twelve-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to revenue bonds for Marshall University capital improvements.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three and five, article twelve-a, 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. West Virginia Board of Education Authorized to Issue Revenue Bonds for Certain Capital Improvements.—The West Virginia Board of Education shall have authority, as provided in this article, to issue revenue bonds of the state, not to exceed five million seven hundred thousand dollars in principal amount thereof, which shall be in addition to the one million nine hundred thousand dollars bonds heretofore issued pursuant to this article, to finance the cost of providing a new classroom and office building, an addition to the library, renovation of administration building and additional land for a new student center building for Marshall University. The principal of and interest on such bonds shall be payable solely from the special nonrevolving fund herein pro-
vided for such payment. The costs of any such building or buildings or improvements shall include the cost of acquisition of land, the construction and equipment of any such building or buildings, and the provision of roads, utilities and other services necessary, appurtenant or incidental to such building or buildings; and shall also include all other charges or expenses necessary, appurtenant or incidental to the construction, financing and placing in operation of any such building or buildings.

Sec. 2. Special Marshall University Capital Improvements Fund Created in State Treasury; Collections to Be Paid into Special Fund; Authority of West Virginia Board of Education to Pledge Such Collections as Security for Revenue Bonds.—There is hereby created in the state treasury a special nonrevolving Marshall University capital improvements fund. On and after the first day of July, one thousand nine hundred sixty-three, or on and after the date of the final payment of all principal of and interest on the one million nine hundred thousand dollars bonds heretofore issued pursuant to this article, or the making of adequate provision for the payment of all principal of and interest on said one million nine hundred thousand dollars bonds, whichever is later, there shall be paid into such special fund all fees collected under the provisions of section one, article one-a, chapter twenty-five of this code, from students at Marshall University, except such fees as are required by that section to be paid into other special funds.

The board of education shall have authority to pledge all or such part of the revenue paid into the special Marshall University capital improvements fund as may be needed to meet the requirements of the sinking fund established in connection with any revenue bond issue authorized by this article, including a reserve fund for the payment of the principal of and interest on such revenue bond issue when other moneys in the sinking fund are insufficient therefor; and may provide in the resolution authorizing any issue of such bonds, and in any trust agreement made in connection therewith, for such priorities on the revenues paid into the special fund as may be
necessary for the protection of the prior rights of the 
holders of bonds issued at different times under the pro-
visions of this article. The board of education shall also 
have authority to use all or any part of the revenue paid 
into the special Marshall University capital improve-
ments fund for the payment of all or any part of the cost 
of providing said classroom and office building, addition 
to the library, renovation of administration building and 
additional land for a new student center building for 
Marshall University: Provided, however, That in the 
event all or any part of such revenue is so used and ap-
plied, the amount of revenue bonds which the board of 
education may issue pursuant to this article shall be cor-
respondingly reduced so that the total amount expended 
pursuant to this article for the payment of the cost of pro-
viding said classroom and office building, addition to the 
library, renovation of administration building and addi-
tional land for a new student center building for Marshall 
University shall not exceed five million seven hundred 
thousand dollars exclusive of any appropriations, grants, 
gifts, or contributions therefor. 

If any balance shall remain in the special Marshall Uni-
versity capital improvements fund after the board has 
issued the maximum of five million seven hundred thou-
sand dollars worth of bonds authorized by this article, 
and after the requirements of all sinking funds and re-
serve funds established in connection with the issue of 
such bonds have been satisfied in each year as provided 
in the resolution or trust agreement authorizing the issu-
ance of such bonds, such balance shall be used solely for 
the redemption of any of the outstanding bonds issued 
hereunder which by their terms are then redeemable, or 
for the purchase of bonds at the market price, but at not 
exceeding the price, if any, at which such bonds shall be 
redeemable on the next ensuing date upon which such 
bonds are redeemable prior to maturity, and all bonds re-
deemed or purchased shall forthwith be cancelled and 
shall not again be issued. Whenever all outstanding bonds 
issued under this article shall have been paid, the special 
Marshall University capital improvements fund shall 
cease to exist and any balance then remaining in such
fund shall be transferred to the general revenue fund of the state. Thereafter all fees formerly paid into such special fund shall be paid into the general revenue fund of the state.

Sec. 3. Issuance of Revenue Bonds.—The issuance of bonds under the provisions of this article shall be authorized by a resolution of the board of education, which shall recite an estimate by the board of the cost of the proposed building or buildings, improvements and land; and shall provide for the issuance of bonds in an amount sufficient, when sold as hereinafter provided, to provide moneys sufficient to pay such cost, less the amount of revenue paid into the special Marshall University capital improvements fund which is used to pay any part of the cost of providing such classroom and office building, addition to the library, renovation of administration building and additional land for a new student center building for Marshall University as authorized by section two of this article and less the amount of any other funds available for the construction or acquisition of the building or buildings, improvements and land from any appropriation, grant, gift, or contribution therefor. Such resolution shall prescribe the rights and duties of the bondholders and the board, and for such purpose may prescribe the form of the trust agreement hereinafter referred to. The bonds shall be of such series, bear such date or dates, mature at such time or times not exceeding thirty years from their respective dates, bear interest at such rate or rates not exceeding five per cent per annum, payable semi-annually; be in such denominations; be in such form, either coupon or fully registered without coupons, carrying such registration exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places; be subject to such terms of redemption at such prices not exceeding one hundred five per cent of the principal amount thereof, and be entitled to such priorities on the revenues paid into the special Marshall University capital improvements fund as may be provided in the resolution authorizing the issuance of the bonds or in any trust agreement made in connection therewith.
The bonds shall be signed by the governor, and by the
president of the board of education, under the great seal
of the state, attested by the secretary of state, and the
coupons attached thereto shall bear the facsimile signa-
ture of the president of the board. In case any of the of-
ficers whose signatures appear on the bonds or coupons
cease to be such officers before the delivery of such bonds,
such signatures shall nevertheless be valid and sufficient
for all purposes the same as if such officers had remained
in office until such delivery.

Such bonds shall be sold in such manner as the board
may determine to be for the best interests of the state,
taking into consideration the financial responsibility of
the purchaser, the terms and conditions of the purchase,
and especially the availability of the proceeds of the bonds
when required for payment of the cost of such building
or buildings, improvements and land, such sale to be made
at a price not lower than a price, which when computed
upon standard tables of bond values, will show a net re-
turn of not more than six per cent per annum to the pur-
chaser upon the amount paid therefor. The proceeds of
such bonds shall be used solely for the payment of the
cost of such building or buildings, improvements and
land, and shall be deposited in the state treasury in a spe-
cial fund and checked out as provided by law for the dis-
bursement of other state funds. If the proceeds of such
bonds, by error in calculation or otherwise, shall, together
with any other funds used therefor as hereinbefore in this
article authorized, be less than the cost of such building
or buildings, improvements and land, additional bonds
may in like manner be issued to provide the amount of
the deficiency, but in no case to exceed five million seven
hundred thousand dollars less the amount of any other
funds used therefor as hereinbefore in this article author-
ized; and unless otherwise provided for in the resolution
or trust agreement hereinafter mentioned, shall be
deemed to be of the same issue, and shall be entitled to
payment from the same fund, without preference or prior-
ity, as the bonds before issued for such building or build-
ings. If the proceeds of bonds issued for such building or
buildings, improvements and land shall, together with
the amount of any other funds used therefor as hereinafter authorized, exceed the cost thereof, the surplus shall be paid into the sinking fund or reserve fund to be established for payment of the principal and interest of such bonds as hereinafter provided. Prior to the preparation of definitive bonds, the board may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon their issuance.

The bonds issued under the provisions of this article shall be and have all the qualities of negotiable instruments under the law merchant and under the negotiable instruments law of this state.

Sec. 5. Sinking Fund for Payment of Bonds.—From the special Marshall University capital improvements fund the board shall make periodic payments to the state sinking fund commission in an amount sufficient to meet the requirements of any issue of bonds sold under the provisions of this article, as specified in the resolution of the board authorizing the issue and in any trust agreement entered into in connection therewith. The payments so made shall be placed by the commission in a special sinking fund which is hereby pledged to and charged with the payment of the principal of the bonds of such issue and the interest thereon, and to the redemption or repurchase of such bonds, such sinking fund to be a fund for all bonds of such issue without distinction or priority of one over another. The moneys in the special sinking fund, less such reserve for payment of principal and interest as may be required by the resolution of the board authorizing the issue and any trust agreement made in connection therewith, may be used for the redemption of any of the outstanding bonds payable from such fund which by their terms are then redeemable, or for the purchase of bonds at the market price, but at not exceeding the price, if any, at which such bonds shall be redeemable on the next ensuing date upon which such bonds are redeemable prior to maturity, and all bonds redeemed or purchased shall forthwith be cancelled and shall not again be issued.
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, designated article five, relating to the establishment of an authority to develop, promote and extend instruction at all levels of education through radio, television and related media.

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 amended, be amended by adding thereto a new article, designated article five, to read as follows:

Article 5. Educational Broadcasting Authority.

Section 1. Purposes and Powers Generally.—The purpose of this article is to provide a means of extending education and instruction to and enriching instruction at the elementary, secondary, higher education and adult levels through radio, television and related media. The authority shall act in matters pertaining to educational television, radio and related media of a noncommercial nature, used for educational purposes in West Virginia, to the end that a coordinated state-wide plan for the use of such media be established as soon as practicable.

The authority is further authorized to act as advisor and consultant to television and radio stations for non-commercial, educational programs supported by federal,
state, county, city and/or private funds. It will cooperate
with and assist all local and state educational agencies
in planning and developing the use of these media. It
will promote and coordinate the use of these media for
noncommercial educational purposes.

The authority is authorized and empowered to estab-
lish broadcasting facilities including production centers,
broadcasting stations and a broadcasting network con-
necting such communities or stations as may be design-
nated by the authority. It may lease from communica-
tions common carriers and use such transmission channels
as may be necessary: Provided, however, That should
the authority decide, upon investigation, that it could
more economically construct and maintain such transmis-
sion channels, it is authorized and empowered to design,
construct, operate and maintain the same, including a
television microwave network. The origination and trans-
mission of all programs over such network shall be as
directed and authorized by the authority under plans
approved by the authority.

The authority shall perform such other services in be-
half of the use of these media in education as it may
consider for the best interest of the state.

Sec. 2. Membership of Authority; Appointment, Terms
and Vacancies of Appointive Members.—The West Vir-
ginia educational broadcasting authority shall consist of
nine members, who shall be citizens and residents of the
state, of whom one shall be the state superintendent of
schools, one shall be a member of the West Virginia board
of education to be selected by it annually, and one shall be
a member of the West Virginia University board of gover-
nors to be selected by it annually. The other six members
shall be appointed by the governor by and with the advice
and consent of the senate for overlapping terms of six
years, except that the original appointments shall be for
terms of one, two, three, four, five and six years, re-
spectively.

The governor shall appoint such six members of the
authority as soon after the effective date hereof as is
practicable for their respective terms of office beginning
18 on the first day of July, one thousand nine hundred sixty-
19 three. Any vacancy among the appointive members shall
20 be filled by the governor by appointment for the un-
21 expired term.

Sec. 3. Organization; Executive Secretary and Personnel; Offices.—At its first regular meeting in each year the
2 broadcasting authority shall elect one of its members as
3 chairman and one as vice chairman. The authority is
4 authorized to select an executive secretary and such other
5 personnel as may be necessary to perform its duties and
6 to fix the compensation of such personnel to be paid out
7 of moneys appropriated for this purpose. The executive
8 secretary shall keep a record of the proceedings of the
9 authority and shall perform such other duties as it may
10 prescribe. The authority is authorized to establish such
11 office or offices as may be necessary for the proper per-
12 formance of its duties.

Sec. 4. Corporate Body and Powers.—The authority is
2 hereby created and established as a public benefit cor-
3 poration, and as such may sue and be sued, plead and be
4 impleaded, contract and be contracted with, including
5 the power to enter into contracts with any person, firm
6 or corporation, including any like authority of a neighbor-
7 ing state, and have and use a corporate seal. The author-
8 ity shall have the power to acquire for the state, in the
9 name of the authority, by purchase, condemnation, lease
10 or agreement, property, both real and personal, and any
11 interest in such property, and shall have the rights,
12 powers, and privileges of eminent domain coextensive
13 with the rights, powers, and privileges of the state. The
14 authority shall have power to establish reasonable rules
15 and regulations for performing its purposes and duties
16 hereunder.

Sec. 5. Meetings; Expense of Members.—The broadcast-
2 ing authority shall hold one meeting in July of each year
3 and at least two additional meetings at such times and
4 places as it may prescribe. It may meet at such other
5 times as may be necessary, such meetings to be held upon
6 its own resolution or at the call of the chairman of the
7 authority. The members shall serve without compensa-
tion, but every member may be reimbursed for actual expenses incident to the performance of his duties upon presentation to the chairman of an itemized sworn statement thereof.

Sec. 6. Funds.—The authority is further authorized to seek and receive federal and state appropriations, gifts, bequests and grants. All such funds shall be deposited with the state treasurer of West Virginia and dispersed by the authority to be used exclusively for carrying out the provisions of this article.

Sec. 7. Advisory Council.—There is hereby created an advisory council to the authority to consist of fifteen members which shall be appointed by the governor to serve for one year.

The advisory council shall meet at least once with the authority and shall evaluate the work of the authority and shall act in an advisory capacity to the authority. Members of the advisory council shall serve without compensation, but they may be reimbursed for actual expenses incident to the performance of their duties as provided in connection with members of the authority.

CHAPTER 63

(House Bill No. 39—By Mr. Speaker, Mr. Singleton, and Mr. Seibert)

[Passed March 9, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to amend and reenact section one-b, article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the imposition, collection and disposition of registration fees at state institutions of higher education.

Be it enacted by the Legislature of West Virginia:

That section one-b, 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:
Article 1-a. Fees and Other Money Collected at State Institutions.

Section 1-b. Additional registration fee at state institutions of higher education; refund of fee; special capital improvements funds created; disposition and use of additional registration fee; revenue bonds.

Section 1-b. Additional Registration Fee at State Institutions of Higher Education; Refund of Fee; Special Capital Improvements Funds Created; Disposition and Use of Additional Registration Fee; Revenue Bonds.—In addition to all other fees imposed by the governing boards of state institutions of higher education, there is hereby imposed and the governing board of each state institution of higher education is hereby directed to provide for the collection of an additional registration fee from all students in the amounts as hereinafter provided.

For full-time students at each state institution of higher education, the additional registration fee shall be fifty dollars per semester. The board of governors of West Virginia University and the West Virginia board of education shall have authority to increase such additional registration fee at any institution of higher education under their respective control for students who are nonresidents of this state, but in no event shall such additional registration fee including any increase exceed one hundred fifty dollars per semester. For all part-time students and for all summer-school students, the respective governing boards shall impose and collect such fee in proportion to, but not exceeding, that paid by full-time students.

The fee imposed by this section shall be in addition to the maximum fees allowed to be collected under the provisions of section one of this article and shall not be limited thereby. Refunds of such fee may be made in the same manner as any other fee collected at state institutions of higher education.

There is hereby created in the state treasury a special capital improvements fund, to be expended by the board of governors of West Virginia University for the benefit of West Virginia University and Potomac state college of West Virginia University, as provided in this section.
On and after the first day of July, one thousand nine hundred sixty-three, there shall be paid into such special fund all proceeds of the additional registration fees collected from students at West Virginia University and at Potomac state college.

There is hereby created in the state treasury a special capital improvements fund, to be expended by the West Virginia board of education for the benefit of the state institutions of higher education under its control, as provided in this section. On and after the first day of July, one thousand nine hundred sixty-three, there shall be paid into such special fund all proceeds of the additional registration fees collected from students at such institutions.

The respective boards may make expenditures from such special capital improvements funds at the various state institutions of higher education under their control to finance in whole or in part, together with any federal, state or other grants or contributions, any one or more of the following purposes: (1) The acquisition of land or any rights or interest therein. (2) The construction or acquisition of new buildings. (3) The renovation or construction of additions to existing buildings. (4) The acquisition of furnishings and equipment for any such buildings. (5) The construction or acquisition of any other capital improvements or capital educational facilities at such state institutions of higher education, including any roads, utilities or other properties, real or personal, or for other purposes necessary, appurtenant or incidental to the construction, acquisition, financing and placing in operation of such buildings, capital improvements or capital educational facilities.

The respective boards, at their discretion, may use the moneys in such special capital improvements funds to finance the costs of the above purposes on a cash basis, or may from time to time issue revenue bonds of the state as provided in this section to finance all or part of such purposes and pledge all or any part of the moneys in such special funds for the payment of the principal of and interest on such revenue bonds, and for reserves
therefor. Any pledge of such special funds for such revenue bonds shall be a prior and superior charge on such special funds over the use of any of the moneys in such funds to pay for the cost of any of such purposes on a cash basis: Provided, however, That any expenditures from such special funds, other than for the retirement of revenue bonds, may only be made by the board of governors of West Virginia University and the West Virginia board of education to meet the cost of a predetermined capital improvements program for one or more of the state institutions of higher education under their control, in such order of priority as shall have been agreed upon by the respective boards and presented to the board of public works for inclusion in the annual budget bill, and only with the approval of the Legislature as indicated by direct appropriation for the purpose.

Such revenue bonds may be authorized and issued from time to time by the respective boards to finance in whole or in part the purposes provided in this section in an aggregate principal amount not exceeding the amount which the respective boards shall determine can be paid as to both principal and interest and reasonable margins for a reserve therefor from the moneys in such special funds.

The issuance of such revenue bonds shall be authorized by a resolution adopted by the respective board, and such revenue bonds shall bear such date or dates, mature at such time or times not exceeding forty years from their respective dates; bear interest at such rate or rates not exceeding five per centum per annum; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding one hundred five per centum of the principal amount thereof; and shall have such other terms and provisions as such respective board shall determine. Such revenue bonds shall be signed by the governor and by the president of the respective board authorizing the issuance thereof, under the great seal of the state, attested by the secre
tary of state, and the coupons attached thereto shall bear
the facsimile signature of the president of such respec-
tive board. Such revenue bonds shall be sold in such
manner as the respective board may determine to be for
the best interests of the state, such sale to be made at a
price not lower than a price which will show a net re-
turn of not more than six per centum per annum to the
purchaser upon the amount paid therefor computed to
the stated maturity dates of such revenue bonds without
regard to any right of prior redemption.

Such respective board may enter into trust agree-
ments with banks or trust companies, within or without
the state, and in such trust agreements or the resolutions
authorizing the issuance of such bonds may enter into
valid and legally binding covenants with the holders of
such revenue bonds as to the custody, safeguarding and
disposition of the proceeds of such revenue bonds, the
moneys in such special funds, sinking funds, reserve
funds, or any other moneys or funds; as to the rank and
priority, if any, of different issues of revenue bonds by
the same board under the provisions of this section; as
to the maintenance or revision of the amounts of such
additional registration fees, and the terms and conditions,
if any, under which such additional registration fees may
be reduced; and as to any other matters or provisions
which are deemed necessary and advisable by such re-
spective board in the best interests of the state and to
enhance the marketability of such revenue bonds.

After the issuance of any of such revenue bonds, the
additional registration fees at the state institutions of
higher education under the control of the board which
issued the bonds shall not be reduced as long as any of
such revenue bonds are outstanding and unpaid except
under such terms, provisions and conditions as shall be
contained in the resolution, trust agreement or other
proceedings under which such revenue bonds were issued.

Such revenue bonds shall be and constitute negotiable
instruments under the law merchant and the negotiable
instruments law of the state; shall, together with the
interest thereon, be exempt from all taxation by the
state of West Virginia, or by any county, school district,
municipality or political subdivision thereof; and such
revenue bonds shall not be deemed to be obligations
or debts of the state, and the credit or taxing power of
the state shall not be pledged therefor, but such revenue
bonds shall be payable only from the revenue pledged
therefor as provided in this section.

CHAPTER 64
(Senate Bill No. 2—By Mr. Carson, Mr. President)

[Passed March 9, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new chapter three, all relating to the establishment, administration and regulation of elections and election procedures, and providing penalties.

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 repealed and that a new chapter three be enacted in lieu thereof to read as follows:

CHAPTER 3. ELECTIONS

Article
2. Registration of Voters.
3. Voting by Absentees.
4. Voting Machines.
5. Primary Elections and Nominating Procedures.
6. Conduct and Administration of Elections.
7. Contested Elections.
8. Regulation and Control of Elections.
9. Offenses and Penalties.
10. Filling Vacancies.


Section
1. Short title; purpose.
2. Scope of chapter; definitions.
3. Persons entitled to vote.
5. Voting precincts and places established; number of voters in precincts.
7. Precinct changes; procedure; precinct record.
8. Political party defined.
9. Political party committees; how composed; organization.
11. Powers of state executive committee; central or subcommittees; party emblem.
12. Members of national party committee.
13. Other party or group committees.
14. Presidential electors; how chosen; duties; vacancies; compensation.
15. Election of United States senators and congressmen.
17. Election of circuit and inferior court judges; county and district officers.
18. Election to fill other offices.
20. Cards of instructions to voters; sample ballots; posting.
21. Printing of ballots, number and requirements; packaging and sealing.
22. County court clerks to provide election supplies; requirement for poll books and ballot boxes.
23. County court to arrange polling places and equipment; requirements.
24. Obtaining and delivering election supplies.
25. Supplies by special messenger.
27. Municipal precinct registration records.
28. Election commissioners and clerks; appointment and notification; vacancies; authority to administer oaths, etc.
29. Same; qualifications; nonpartisan or public question elections.
30. Same; oaths; authority to administer.
31. Days and hours of elections.
32. Opening and closing polls; procedure.
33. How elections conducted by double boards.
34. Voting procedures generally; assistance to voters; voting records.
35. Ballots to be furnished voters.
36. Reports on and disposition of ballots spoiled or not used.
37. Restrictions on presence and conduct at polls.
38. Disorder at polls; procedure.
39. Illegal voting; affidavit; arrest; procedure.
40. Disposition of other affidavits used at polls; procedure; grand jury action.
41. Challenged voter procedures; counting of challenged voters' ballots; ballots of election officials.
42. Time off for voting.
43. Disposition of miscellaneous election papers.
44. Compensation of election officials; expenses.
45. Court proceedings to compel performance of duties, etc.

Section 1. Short Title; Purpose.—This chapter shall constitute and may be cited as the "West Virginia Election Code" and contemplates and comprehends a code of laws for the establishment, administration and regulation of elections and election procedures in the State of West Virginia.

Sec. 2. Scope of Chapter; Definitions.—Unless restricted by the context, the provisions of this chapter shall apply to every general, primary, and special election in which candidates are nominated or elected or in which voters pass upon any public question submitted to them, except that the provisions hereof shall be construed to be oper-
ative in municipal elections only in those instances in which they are made expressly so applicable.

Unless the context clearly requires a different meaning, as herein used:

“Voter” shall mean any person who possesses the statutory and constitutional qualifications for voting;

“Election” shall mean the procedure whereby the voters of this state or any subdivision thereof elect persons to fill public offices or vote on public questions;

“Any election” or “all elections” shall include every general, primary, or special election held in this state, or in any of its subdivisions, for the purpose of nominating or electing federal or state officers, or county, city, town or village officers of any subdivision now existing or hereafter created, or for voting upon any public question submitted to the people of the state or any of the aforesaid subdivisions;

“Office” shall be construed to mean “public office” which shall include any elective office provided for by the constitution or laws of the United States or of this state to which a salary or other compensation attaches;

“Candidate” shall mean any person to be voted for at an election;

“Public question” shall mean any issue or proposition, now or hereafter required by the governing body of this state or any of its subdivisions to be submitted to the voters of the state or subdivision for decision at elections.

Sec. 3. Persons Entitled to Vote.—Citizens of the state shall be entitled to vote at all elections held within the precincts of the counties and municipalities in which they respectively reside. But no person who has not been registered as a voter as required by law, or who is a minor, or of unsound mind, or a pauper, or who is under conviction of treason, felony or bribery in an election, or who, in the case of state-county elections has not been a bona fide resident of the state for one year and of the county in which he offers to vote for sixty days next preceding such election, or who in the case of municipal elections has not been a bona fide resident of the state for one year and of the municipality in which he offers...
to vote for sixty days next preceding such election, shall
be permitted to vote at such election while such disability
continues. Subject to the qualifications otherwise pre-
scribed in this section, however, a minor shall be per-
mitted to vote in a primary election if he will have
reached the age of twenty-one years on the date of the
general election next to be held after such primary elec-
tion.

Sec. 4. Manner of Voting.—In all elections the mode
of voting shall be by ballot, but the voter shall be left
free to vote by either open, sealed, or secret ballot, as
he may elect. Voting by ballot may be accomplished as
provided in articles three, four, five and six of this
chapter.

Sec. 5. Voting Precincts and Places Established; Num-
ber of Voters in Precincts.—The precinct shall be the basic
territorial election unit. The county court shall divide
each magisterial district of the county into election pre-
cincts, shall number the precincts, shall determine and
establish the boundaries thereof, and shall designate one
voting place in each precinct, which place shall be estab-
lished as nearly as possible at the point most convenient
for the voters of the precinct. Each magisterial district
shall contain at least one voting precinct and each precinct
shall have but one voting place therein.

Each precinct within any urban center shall contain
not less than three hundred nor more than eight hundred
registered voters. Each precinct in a rural or less thickly
settled area shall contain not less than two hundred nor
more than seven hundred registered voters. If, at any
time the number of registered voters shall exceed the
maximum number in either case herein specified, it shall
be the duty of the county court to, and it shall, rearrange
the precincts within the political division so that the
new precincts formed therefrom, or from any part there-
of, shall each contain a number of registered voters
within the limits above provided. If such county court
fails to so act as herein directed, any qualified voter of
the county may apply for a writ of mandamus to compel
the performance of this duty.
In order to facilitate the conduct of local and special elections and the use of election registration records therein, precinct boundaries shall be established to coincide with the boundaries of any municipality of the county and with the wards or other political subdivisions of the municipality except in instances where found by the county court to be wholly impracticable so to do.

The provisions of this section shall be subject to the provisions of section twenty-eight of article four of this chapter relating to the number of voters in precincts in which voting machines are used.

Sec. 6. Municipal Voting Precincts.—The governing bodies of all municipalities shall, for the purpose of municipal elections, provide by ordinance for making the voting precincts in the respective municipalities coincide, as nearly as possible, to the boundaries of the voting precincts fixed by the county court for all state and county elections.

Sec. 7. Precinct Changes; Procedure; Precinct Record.—Subject to the provisions and limitations of section five of this article, the county court of any county may change the boundaries of any precinct within such county, or divide any precinct into two or more precincts, or consolidate two or more precincts into one, or change any place of holding elections, whenever the public convenience may require it. If by reason of the destruction of the house or structure at which a voting place is established, or if for any other reason the election cannot be held thereat, and no provision has been made by the county court for holding the election at another place, the commissioners of election at such place may hold the election at the place nearest thereto which they can secure for the purpose; and in such case they shall make known by proclamation, to the voters assembled at such first named place of voting, the place at which the election will be held. The county court shall, in such case, establish another place of voting for said precinct as soon thereafter as practicable. No order effecting such change, division, or consolidation shall be made by the county court within ninety days next preceding an election nor
without giving notice thereof at least one month before such change, division or consolidation, by publication once a week for two successive weeks in two newspapers published in said county, if such there be, representing the two political parties which cast the highest and next highest number of votes in the state at the last preceding general election, and by notices posted at four public places in each precinct affected thereby.

Such court shall also, within fifteen days after the date of such order, cause a copy thereof to be published once a week for two successive weeks in two newspapers published as aforesaid.

Such court shall also, before the next succeeding election, cause the voters in the several precincts so affected by such order to be duly registered in the proper precinct or precincts.

The county court shall keep in a well-bound book, marked "election precinct record," a complete record of all their proceedings hereunder and of every order made creating a precinct or precincts or establishing a place of voting therein. Such "election precinct record" shall be kept by the county court clerk in his office, and shall, at all reasonable hours, when not actually in use by the county court, be open to inspection by any citizen of the county.

Sec. 8. Political Party Defined.—Any affiliation of voters representing any principle or organization which, at the last preceding general election, polled for its candidate for governor at least one per cent of the total number of votes cast for all candidates for that office in the state, shall be a political party, within the meaning and for the purpose of this chapter.

Sec. 9. Political Party Committees; How Composed; Organization.—At the May primary election in the year one thousand nine hundred sixty-four and in every fourth year thereafter, the voters of each political party in each senatorial district shall elect two male and two female members of the state executive committee of the party. In senatorial districts containing two or more counties, not more than two such elected committee members shall be resi-
9. The committee, when convened and organized as herein provided, shall appoint three additional members of the committee from the state at large.

At such primary election, the voters of each political party in each county shall elect one male and one female member of the party’s executive committee of the congressional district and of the senatorial district in which such county is situated. At the same time such voters in each magisterial district of the county shall elect one male and one female member of the party’s county executive committee and, in any county containing a city of ten thousand or more in population, such voters of each ward of such city within the county shall elect one male and one female member of such county party executive committee in addition to the members thereof chosen from the magisterial district or districts in which such city is situated.

All members of executive committees, selected for each political division as herein provided, shall reside within the county, district, or ward from which chosen.

The term of office of all members of executive committees so elected shall begin on the first day of June, following said May primary, and shall continue for four years thereafter and until their successors are elected and qualified. Vacancies in the state executive committee shall be filled by the members of the committee for the unexpired term. Vacancies in the congressional, senatorial and county executive committees shall be filled by the executive committee of the county in which such vacancy exists, and shall be for the unexpired term.

As soon as possible after the first day of June, following the election of the new executive committees, as herein provided, they shall convene within their respective political divisions, on the call of the chairman of corresponding outgoing executive committees, and proceed to select a chairman, a treasurer, and a secretary, and such other officers as they may desire, each of which officers shall for their respective committees perform the duties that usually appertain to such offices.
Sec. 10. Party Committees in Office.—The members of all state, congressional, senatorial, and county executive committees for political parties in office at the time this article becomes effective, and the various officers of such committees, shall hold their several offices and discharge the duties thereof until their successors are chosen and installed in accordance with the provisions of this article.

Sec. 11. Powers of State Executive Committee; Central or Subcommittees; Party Emblem.—The state executive committee of each party may make such rules for the government of such party, not inconsistent with law, as may be deemed expedient; and it may also revoke, alter, or amend, in any manner not inconsistent with law, any present or future rules of such party. All acts of such state or other committees may be reviewable by the courts.

Any party executive committee may create and appoint subcommittees, campaign, or central committees, and delegate to them such powers and authority in the executive and administrative work of the committee as they shall deem advisable; but no power or authority shall be delegated to such subcommittee, campaign committee, or central committee, in contravention of any law of the state.

The state executive committee shall adopt a party emblem or device for the party to distinguish and identify the party ticket, and shall certify the same to the ballot commissioners, and it shall be printed on the party ticket. The device or emblem of no two parties shall be similar or of such a nature as to mislead or confuse the voter. If two or more parties seek the same device, or similar devices, preference shall be given to the party polling the largest number of votes for the candidate for governor at the last election for such office.

Sec. 12. Members of National Party Committee.—The members of the national party executive committee of any political party, to which the state is entitled under the national organization and the rules and regulations of the national committee of the party, shall be elected
by the state executive committee of such party, unless
the rules of the national party otherwise provide, in
which latter event they shall be selected in all respects
as provided for the selection thereof by the rules and
regulations of the national organization of the political
party and the resolutions of the delegated representatives
of the political party passed and adopted by any national
convention of such political party. A vacancy in the
membership of a national party executive committee
shall be filled by the state committee of the party unless
the rules of the national party otherwise provide.

Sec. 13. Other Party or Group Committees.—The mem-
bers of any political party which, at the last preceding
general election, polled, for its candidate for governor,
fewer than ten per cent of the total number of votes cast
for all candidates for that office in the state, and groups
of citizens, not constituting a political party, which nomi-
nate candidates for offices to be voted for at any election,
may select members of committees and officers thereof,
for such political parties and such groups of citizens, in
such manner as they may devise and adopt.

Sec. 14. Presidential Electors; How Chosen; Duties;
Vacancies; Compensation.—Electors of president and vice
president of the United States shall be nominated as pro-
vided in section twenty-one of article five of this chapter
but their names shall be omitted from the general elec-
tion ballot, as provided in section two of article six of
this chapter, to be voted on the Tuesday next after the
first Monday in November in the year nineteen hundred
and sixty-four and every fourth year thereafter.

The presidential electors shall meet in the office of the
governor at the capital 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 at-
tend, 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.

Sec. 15. Election of United States Senators and Con-
gressmen.—At the general election in the year nineteen
hundred and sixty-four and at each general election in
every sixth year thereafter, and at the general election
in the year nineteen hundred and sixty-six, and in each
sixth year thereafter, there shall be elected a member
of the United States senate, and at the general election in
the year nineteen hundred and sixty-four, and in every
second year thereafter, there shall be elected a member
of the house of representatives in the Congress of the
United States for each congressional district of the state,
each for the next ensuing term.

Sec. 16. Election of State Officers.—At the general elec-
tion to be held in the year nineteen hundred and sixty-
four, and in every fourth year thereafter, there shall be
elected a governor, secretary of state, treasurer, auditor,
attorney general, and commissioner of agriculture. At the
general election in the year nineteen hundred and sixty-
four, and in every second year thereafter, there shall be
elected a member of the state senate for each senatorial
district, and a delegate or delegates to the legislature
of the state from each county or each delegate dis-
trict. At the general election to be held in the year
nineteen hundred and sixty-eight, and in every twelfth
year thereafter, there shall be elected one judge of
the supreme court of appeals, and at the general elec-
tion to be held in the year nineteen hundred and seventy-
two, and in every twelfth year thereafter, two judges of
the supreme court of appeals, and at the general election
to be held in the year nineteen hundred and sixty-four,
and in every twelfth year thereafter, two judges of the
the supreme court of appeals.

Sec. 17. Election of Circuit and Inferior Court Judges;  
County and District Officers.—There shall be elected, at
the general election to be held in the year nineteen hun-
dred and sixty-eight, and in every eighth year thereafter,
one judge of the circuit court of every judicial circuit,
except the first circuit, and of the first circuit two judges
of said court; and at the general election to be held in the
year nineteen hundred and sixty-four, and in every fourth
year thereafter, a sheriff, prosecuting attorney, surveyor
of lands, and the number of assessors prescribed by law
for the county, and the number of justices of the peace
and constables in each magisterial district in the county
to which the district is entitled by law, the number of jus-
tices and constables to be prescribed from time to time
by the county court; and at such election, and in every
second year thereafter, a commissioner of the county court
for each county; and at the general election to be held
in the year one thousand nine hundred sixty-eight, and
in every sixth year thereafter, a clerk of the county court
and a clerk of the circuit court, for each county; and at
each general election next preceding the expiration of the
term of any judge of any common pleas, criminal or other
inferior court, a judge of such court, each for the term
next ensuing after the date of the election.

Sec. 18. Election to Fill Other Offices.—If the legisla-
ture shall hereafter create any elective office, or make any
office now filled by appointment an elective office, in the
state or in any subdivision thereof, the person to fill the
same shall be elected at the general election last preceding
the beginning of the term of such office.

Sec. 19. Ballot Commissioners; Selection; Duties Gen-
erally; Vacancies.—In each county in the state, the clerk
of the circuit court while holding such office, and two per-
sons by him appointed, one from each of the two political
parties which cast the largest and second largest number
of votes in the state at the last preceding general election,
shall constitute a board of ballot commissioners, of which
board the said clerk shall be chairman. It shall be the
duty of the clerk of said court to notify the chairman of
the respective county executive committees of such two
parties, at least five days before making such appoint-
ments, of the time and place of making the same, and if at
any time after such notice is given, and before or on the
day so fixed for making such appointments, the chairman
of either of such committees shall designate, in writing, a
member of such party as ballot commissioner having the
qualifications of a voter, he shall be appointed. Ballot
commissioners shall be appointed between the fifteenth
and thirtieth days of March in each year in which a gen-
eral election is to be held, for a term of two years begin-
ning on the first day of April next ensuing. They shall
perform the duties of such commissioners at all general,
special and primary elections held in the county or any
magisterial district thereof during their term of office.
A vacancy shall be filled in the same manner as an orig-
inal appointment, but immediate notice of a vacancy shall,
where necessary, be deemed compliance with the five day
notice provision.

Sec. 20. Cards of Instructions to Voters; Sample Ballots;
Posting.—The board of ballot commissioners of each coun-
ty shall cause to be printed in large, clear type, on cards,
instructions for the guidance of voters in preparing their
ballots. They shall furnish twelve of such cards to the
commissioner of election at the same time they deliver to
him the ballots for the precinct. The commissioners of
election shall cause to be posted one of such cards in each
place or compartment provided for the preparation of bal-
lots, and the others in and about the polling place, and one
or more of the cards outside of the sixty-foot limit pro-
vided for in this article, on the day of election. Such cards
shall contain full instructions to the voters as to what
shall be done:
(a) To obtain ballots for voting;
(b) To prepare the ballots for deposit in the ballot
boxes;
(c) To obtain a new ballot in place of one accidentally
spoiled.
Such cards shall contain a copy of the second paragraph
of section two and a copy of all of sections five, six, eight
and nine of article nine of this chapter.

The ballot commissioners shall also cause to be printed,
on colored paper, ten or more copies of the ballots pro-
vided for each voting place, at each election therein, which
shall be called sample ballots, and shall be furnished and
posted with the cards of instruction at each voting place.

Sec. 21. Printing of Ballots, Number and Requirements;
Packaging and Sealing.—It shall be the duty of the board
of ballot commissioners for each county to provide printed
ballots for every election for public officers in which the
voters or any of the voters within the county participate,
and cause to be printed, on the appropriate ballot, the
name of every candidate whose name has been certified to
or filed with the clerk of the circuit court of the county in
any manner provided for in this chapter. In any case
wherein the constitution or statutes limit or prescribe the
number of candidates or elected officers to be selected by
the voters in any district or other governmental subdivi-
sion, the ballot commissioners, in the preparation of such
ballots, shall cause to be printed thereon, in plainly
worded language, the number of candidates to be voted
for in each district or other governmental subdivision.
The printing of the ballots, and all other printing caused
to be done by the board of ballot commissioners, shall be
contracted for with the lowest responsible bidder. Ballots
other than those caused to be printed by the respective
boards of ballot commissioners, according to the provi-
sions of this chapter, shall not be cast, received, or counted
in any election.

For each such election to be held in their county and
at least thirty days before the date of such election, the
board of ballot commissioners shall cause to be printed
official ballots to not more than one and one-fifth times the
number of registered voters in the county. Provisions of
article five of this chapter shall govern the printing of
ballots for primary elections. The ballots so printed shall
be wrapped and tied in packages, one for each precinct
in their county, containing ballots to the number of one
and one-twentieth times the number of registered voters
in such precinct. Each package of ballots shall be sealed
with wax, and plainly marked with the number of ballots therein, the name of the magisterial district, and the number of the voting place therein, to which it is intended to be sent. The names of the ballot commissioners shall also be indorsed thereon.

Sec. 22. County Court Clerks to Provide Election Supplies; Requirements for Poll Books and Ballot Boxes.—The clerk of the county court of each county shall provide poll books, tally sheets, ballot boxes, voting booths, registration records and forms, strong and durable envelopes upon which to make returns, blank forms for certifying returns and whatever further supplies are needed for holding the elections and making the returns thereof. The poll books shall bear upon each page the following heading: “Names of persons voting at precinct No. .......... in the District of ................. in the county of ................. on this (the) ................. day of ................. in the year .................” Such poll books shall have columns headed respectively: “Number of Voters,” “Signature of Voter,” and “Challenge of Voter,” and shall have under the heading “Number of Voters,” numbers in consecutive order to the bottom of each page. Forms for oaths of commissioners of election and poll clerks shall be written or printed on the poll books. Each ballot box shall be provided with two locks with different keys so that the key for one lock will not open the other, and shall be so constructed as to be safely and securely closed and locked, with an opening in the lid of the box sufficient only for the passage of a single ballot.

Sec. 23. County Court to Arrange Polling Places and Equipment; Requirements.—The county court in each county, before each election, shall secure, in each voting precinct in the county, a suitable room or building in which to hold the election, and shall cause the same to be suitably provided with a sufficient number of booths or compartments, each containing a table, counter or shelf, and furnished with proper supplies for preparing ballots, at or in which voters may conveniently prepare their ballots, so that in the preparation thereof they may be secure from the observation of others. The number of such booths or compartments shall not be less than two nor more than five.
Sec. 24. Obtaining and Delivering Election Supplies.—
It shall be the duty of the board of ballot commissioners to appoint one or more of the commissioners of election at each precinct of the county to attend at the offices of the clerks of the circuit and county courts, as the case may be, at least three days before each election to receive the ballots, ballot boxes, poll books, registration records and forms and all other supplies and materials for conducting the election at the respective precincts. The clerks shall take a receipt for the respective materials delivered to the above commissioner or commissioners of election, and shall file such receipt in their respective offices. It shall be the duty of such commissioners to receive such supplies and materials from the respective clerks and to deliver the same with the seal of all sealed packages unbroken, at the election precinct in time to open the election.

Such commissioner or commissioners, if they perform such services, shall receive the per diem and mileage rate prescribed by law for this service.

Ballots shall be delivered in sealed packages with seals unbroken. For general and special elections the ballots so delivered shall not be in excess of one and one-twentieth times the number of registered voters in the precinct. For primary elections the ballots for each party shall be in a separately sealed package containing not more than one and one-twentieth times the number of registered voters of such party in the election precinct.

For primary elections one copy of the poll books, including the forms for oaths of commissioners of election and poll clerks written or printed thereon, shall be supplied at each voting precinct for each political party appearing on the primary ballot.

There shall be two ballot boxes for each election precinct for which a receiving and a counting board of election commissioners have been appointed.

Sec. 25. Supplies by Special Messenger.—In case any commissioner of election so appointed shall fail to appear at the offices of the clerks of such county and circuit courts, by the close of the second day prior to any election, as required by the preceding section, the board of ballot
commissioners, or the chairman thereof, shall forthwith
dispatch a special messenger to the commissioners of elec-
tion of each respective precinct with the ballots, regis-
tration records, ballot boxes, poll books and other supplies
for such precinct. Such messenger shall be allowed two
dollars for his time, and seven cents a mile for the dis-
tance necessary to be traveled by him, and shall promptly
report to the clerks of the circuit and county court, re-
spectively, and file with such clerks the receipts of the
person to whom he delivered such ballots and other sup-
plies, and his affidavit, stating when and to whom he de-
lected them.

Sec. 26. Election Supplies in Emergencies.—If, by any
accident or casualty, the ballots or ballot box or boxes
delivered to a commissioner of election, or to any mes-
senger, shall be lost or destroyed, it shall be the duty of
such commissioner or messenger to report the loss forth-
with to the board of ballot commissioners and clerk of the
county court from whom the same were, or was, obtained,
and make affidavit of the circumstances of the loss; where-
upon such board and clerk shall at once send a new supply
by special messenger, as provided in other cases. If, for
any reason, there should be found no ballots, or ballot
box, or other necessary means or contrivances for voting,
at the opening of the polls, it shall be the duty of the com-
missioners of election to secure the same as speedily as
possible and, if necessary, the ballot commissioners may
have ballots printed or written, and the election commis-
sioners may have a ballot box or boxes made.

Sec. 27. Municipal Precinct Registration Records.—At
least three days prior to every municipal election, it shall
be the duty of the appropriate officer designated by the
municipality to procure from the municipal precinct file
in the office of the clerk of the county court the registra-
tion records necessary for the conduct of such election.
Such records shall, within ten days after the date of the
municipal election, be returned to the office of the clerk
of the county court by the appropriate officer or officers
designated by the municipality.

In case of a contested municipal election, the registra-
tion record of any challenged voter shall be made available
by the clerk of the county court to the officer or tribunal
empowered to determine the contest. Such records shall
be returned to the office of the clerk of the county court
within a reasonable time after the contest shall have been
finally decided.

The clerk of the county court shall acknowledge the
release and return of the registration records under this
section by the issuance of appropriate receipts.

In the event any municipal registration record is lost,
destroyed, defaced, or worn in any way as to warrant
replacement, it shall be the duty of the clerk of the county
court to prepare a duplicate of such record and it shall be
the duty of the municipality to pay for such replacement.

Sec. 28. Election Commissioners and Clerks; Appointment and Notification; Vacancies; Authority to Administer Oaths, etc.—The county court of each county shall hold
a regular or special session at the courthouse of the county
on the first Tuesday of the month next preceding the date
on which any election is to be held and appoint three com-
missioners and two clerks to hold the election in each
precinct in the county. In primary and general elections
and in any special election in which political party candi-
dates are to be nominated or elected, the election commiss-
ioners and clerks shall be selected from the two political
parties which at the last preceding general election cast
the highest and the second highest number of votes in this
state. For every precinct in which there are three hun-
dred, but not more than four hundred, registered voters,
there may be two boards of elections officers, and for all
precincts in which there are more than four hundred
registered voters, there shall be two boards of election offi-
cers, and where two boards are used, each board shall
consist of three election commissioners and two poll
clerks, one of which boards shall be designated the “re-
ceiving board” and the other the “counting board” and not
more than two commissioners and one poll clerk of each
board shall be appointed from the same political party. If,
at any time before or during the session of the county
court, the county executive committee of either or both of
the political parties, from which commissioners and clerks
of election are to be selected, shall file with or present to
the county court a writing signed by them, or by the
chairman or secretary of such committee on their behalf,
requesting the appointment of a member and of one clerk
of each board of the political party for which such com-
mittee, chairman or secretary is acting, and designating
persons who are qualified under this article for such ap-
pointment for each election precinct in the county, the
county court shall appoint the persons so designated.

The county court shall by mail notify all commissioners
and poll clerks of their appointment, and include with
such notice an appropriate form for each person so ap-
pointed to return indicating whether or not he will serve
as such commissioner or poll clerk. It shall be the duty
of all persons so appointed to immediately return said
form to the county court. In the event any of the persons
so appointed refuse to serve as such commissioners or poll
clerks, the county court shall immediately notify the
chairman of the county executive committee of the politi-
cal party from which such commissioners and poll clerks
are to be selected. The chairman of the political com-
mittee so notified shall recommend the person or persons
to be appointed to replace those declining to serve and
it shall be the duty of the county court to appoint the
person or persons so recommended.

If any person appointed receiving commissioner or clerk
of election shall fail to appear at the voting place at the
hour for opening the polls, the remaining commissioner
or commissioners of election of the political party to
which the absentee belongs shall select another commis-
sioner or clerk, as the case may be, of such political party.
But if the qualified voters of his party present at the polls
shall nominate a voter of his party qualified to act under
the provisions of this section, such nominee shall be ap-
pointed. If none of the receiving commissioners of the
election or poll clerks shall appear at the voting place
at the hour appointed for opening the polls, the qualified
voters present, being at least ten in number, of the politi-
cal party which cast the highest number of votes in the
county at the last preceding election, shall select two
commissioners and one clerk and those of the political
party which cast the next highest number of votes in the county at such election shall select one commissioner and one clerk of the receiving board of such precinct, and the persons so selected shall constitute the receiving board for the precinct. A vacancy or vacancies on the counting board shall be filled in the manner herein provided for filling a vacancy or vacancies on the receiving board, except that such vacancy or vacancies shall be determined and filled as of the hour appointed in this chapter for the counting board to attend at the polls. Any commissioner of election acting at any election precinct is hereby empowered and authorized to administer oaths and to take and certify affidavits in relation to any matter or thing required or permitted to be done by any of the provisions of this article in conducting and holding the election.

Sec. 29. Same; Qualifications; Nonpartisan or Public Question Elections.—No person shall be eligible to be appointed as a commissioner of election or as a poll clerk in any election precinct who is not a qualified voter in the magisterial district in which such precinct is situated; or who has anything of value bet or wagered on the result; or who is a candidate to be voted for at the ensuing election or who is addicted to drunkenness; or who is not of good character and standing; or who has in his employment, or, as agent or superintendent, has under his control or management ten or more employees who are voters entitled to vote in the precinct; or who has served or acted in the capacity of deputy sheriff within six months prior to the date of holding any such primary or general election.

Whenever a nonpartisan or public question election is to be conducted separate and apart from a primary or general election, the provisions of this article relating to the selection, appointment and qualifications of commissioners of election and poll clerks shall govern and control, except that persons duly registered as “independent” or as adherents to a political party or group other than the two majority political parties then recognized, when otherwise qualified to be election officials, may be appointed commissioners of election and poll clerks for the conduct of such nonpartisan and public question elections.
Sec. 30. Same; Oaths; Authority to Administer.—Each commissioner of election and poll clerk, appointed or selected as aforesaid, shall, before entering upon the discharge of his duties, take and subscribe an oath, respectively, to the following effect:

(Commissioner’s Oath)

State of West Virginia.

I, (name), do solemnly swear that I will support the Constitution of the United States and the Constitution of this State; that I will faithfully and impartially discharge the duties of commissioner of election assigned by law; that I will not knowingly permit any person to vote who is not qualified, and will not knowingly refuse the vote of any qualified voter, or cause any delay to a person offering to vote further than is necessary to procure satisfactory information of the qualifications of such person as a voter; that I have been a resident of the State of West Virginia for one year, and of the county and magisterial district in which I am to act as commissioner of election, for sixty days next preceding this date; that I will not disclose nor communicate to any person how any voter has voted at such election, nor how any ballot has been folded, marked, printed or stamped; that I have nothing of value bet or wagered upon the result of said election; that I have not received any promise, agreement or understanding that I am to receive appointment as deputy from any candidate to be voted for at such election; that I do not have any agreement, understanding or arrangement that I shall receive any sum of money or any portion of the salary, fees or emoluments of any office for which any candidate is to be voted for at such election, should such candidate be elected to such office at such election or any subsequent election; that I am not a candidate at this election. So help me God.

Subscribed and sworn to before me this (date) day of (month), 19__.

Signature and official title of
person before whom sworn.

(Clerk’s Oath)

State of West Virginia, ______ county, ss:

I, _____________, do solemnly swear that I will faithfully and honestly discharge my duties as clerk of the election now about to be held in precinct No. __________, in the district of ___________, county of ___________, State of West Virginia; that I will not disclose nor communicate to any person how any elector voted, or how any ballot was folded, marked, printed or stamped; that I do not have any promise, agreement or understanding that I am to be appointed as deputy by any candidate to be voted for at such election; that I do not have any agreement, understanding or arrangement that I shall receive any sum of money or any portion of the salary, fees or emoluments from any office for which any candidate is to be voted for at such election, should such candidate be elected at such election or any subsequent election. So help me God.

Subscribed and sworn to before me this ___ day of ___, 19____.

Signature and official title of person before whom sworn.

Said oaths may be taken before any person authorized to administer oaths, but if no other person be present at any place of holding any election, they may be taken before, and administered by, one of the commissioners of such election so appointed, who in turn may take the same before another of such commissioners. Either of the commissioners may administer the oaths to the poll clerks. For the purposes of this chapter all commissioners of election are authorized to administer oaths. Such oaths shall appear completed and certified on one of the poll books of every election precinct.

Sec. 31. Days and Hours of Elections.—General elections shall be held in the several election precincts of the state on the Tuesday next after the first Monday in November of each even year. Primary and special elections shall be held on the days provided by law therefor.
At every primary, general or special election the polls shall be opened in each precinct on the day of such election at six-thirty o'clock in the forenoon and be closed at seven-thirty o'clock in the evening.

Sec. 32. Opening and Closing Polls; Procedure.—At the time of opening the polls in all precincts wherein voting machines are not to be used, the election commissioners shall examine the ballot box and ascertain that there are no ballots in the same, and they shall thereupon securely lock the box and give one key to one of the commissioners and one to a commissioner of the opposite political party, who shall hold the same, and such boxes shall not be again opened until the time to begin counting the votes arrives and for that purpose. At or before opening the polls, the commissioners of election shall open the package containing the ballots in such manner as to preserve the seals intact and thereupon deliver all of the ballots to the poll clerk. Before any voter is permitted to vote, the commissioners of election shall proclaim that such election is opened. When the polls are closed, proclamation must be made of the fact by one of the commissioners of election to the people outside, in a loud and audible tone of voice, and a minute of such proclamation and of the time when it was made must be entered on the poll books by the clerks. After such minute has been made and entered, no ballot of any voter shall be cast or received.

Sec. 33. How Elections Conducted by Double Boards.—In all precincts wherein two election boards shall have been appointed, the receiving board shall attend at the opening of the polls, shall open the polls, and shall proceed with the election. The counting board shall attend at the voting place not later than three hours after the opening of the polls, and shall take charge of the ballot box containing the ballots theretofore cast in that precinct. They shall retire to a partitioned room or space in the voting place and there proceed to count and tabulate the ballots cast, as they shall find them deposited in the ballot box. The receiving board shall continue to receive the vote of electors in the other box, until such
time as the counting board shall have finished counting
and tabulating the ballots cast in the first ballot box.
The counting board shall, before exchanging the ballot
boxes as herein provided, seal the ballots counted by it
in envelopes to be provided for the purpose, which shall
not be opened until the two boards shall together proceed
with counting, tabulating and summarizing the votes as
by this chapter provided. The two boards shall then
exchange the first box for the second box, and so continue
until the hour of closing the polls arrives.

Sec. 34. Voting Procedures Generally; Assistance to
Voters; Voting Records.—Any person offering to vote in
an election shall, upon entering the election room, clearly
state his name and residence to one of the poll clerks who
shall thereupon announce the same in a clear and distinct
tone of voice. If such person is found to be duly registered
as a voter at that precinct, he shall be required to sign his
name in the space marked “signature of voter” on the poll
book prescribed and provided for the precinct. If such
person be physically or otherwise unable to sign his name,
his mark shall be affixed by one of the poll clerks in the
presence of the other and the name of the poll clerk affix-
ing the voter’s mark shall be indicated immediately under
such affixation. No ballot shall be given to such person
until he so signs his name on the poll book or his signature
is so affixed thereon.

When the voter’s signature is properly on the poll
book, the two poll clerks shall sign their names in the
places indicated on the back of the official ballot and
shall deliver the ballot to the voter to be voted by him
then without leaving the election room. If he returns
the ballot spoiled to the clerks, they shall immediately
destroy the spoiled ballot and deliver to the voter another
official ballot, signed by the clerks on the reverse side as
before done. The voter shall thereupon retire alone to
the booth or compartment prepared within the election
room for voting purposes and there prepare his ballot,
using a black lead pencil or other means for the purpose.
In voting for candidates in general and special elections,
the voter shall comply with the rules and procedures
prescribed in section five of article six of this chapter.

Any person whose registration record indicates his inability to write may declare his choice of candidates to the poll clerks who, in the presence of the voter and in the presence of each other, shall prepare the ballot for voting in the manner hereinbefore provided, and, on request, shall read over to such voter the names of candidates on the ballot as so prepared; or such voter may require the poll clerks to indicate to him the relative position of the names of the candidates on the ballot, whereupon the voter shall retire to one of the booths or compartments to prepare his ballot in the manner hereinbefore provided, or may request the poll clerks to mark the ballot as he directs.

If the voter is unable to mark his ballot because of blindness and the voter presents a doctor's certificate as to such blindness, and if he shall so elect, said poll clerks shall both withdraw, and permit the voter to be assisted by any person designated by such voter.

After preparing the ballot the voter shall fold the same so that the face shall not be exposed and so that the names of the poll clerks thereon shall be seen. The voter shall then announce his name and present his ballot to one of the commissioners who shall hand the same to another commissioner, of a different political party, who shall deposit it in the ballot box, if such ballot is the official one and properly signed. The commissioners of election may inspect every ballot before it is deposited in the ballot box, to ascertain whether it is single, but without unfolding or unrolling it, so as to disclose its content. When the voter has voted, he shall retire immediately from the election room, and beyond the sixty-foot limit thereof, and shall not return, except by permission of the commissioners.

It shall be the duty of a poll clerk, in the presence of the other poll clerk, to indicate by a check mark inserted in the appropriate place on the registration record of each voter the fact that such voter voted in the election. In primary elections the clerk shall also insert thereon a distinguishing initial or initials of the political party for whose candidates the voter voted. If a person is chal-
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Sec. 35. Ballots to Be Furnished Voters.—In general and special elections the ballots for all voters of an election precinct shall be the same. In primary elections the ballot of the voter’s political party at that election in that precinct shall be furnished to the voter together with separate ballots, if any, on any nonpartisan candidates and any public questions submitted to the voters generally at such primary election. In the event the voter is lawfully registered as “independent” or as an adherent of a political party not appearing on any primary election ballot to be voted in his precinct, he shall not, in a primary election, be given or entitled to vote any party ballot but shall be furnished any separate ballots to be voted thereat on nonpartisan candidates and public questions.

Sec. 36. Report on and Disposition of Ballots Spoiled or Not Used.—Any voter who shall spoil, deface or mutilate the ballot delivered to him, on returning the same to the poll clerks, shall receive another in place thereof. Every person who does not vote any ballot delivered to him shall, before leaving the election room, return such ballot to the poll clerks. When a spoiled or defaced ballot is returned, the poll clerks shall make a minute of the fact on the poll books, at the time, and such ballot shall then be destroyed by them in the presence of the commissioners of election.

Immediately on closing the polls, the commissioners of election shall ascertain the number of ballots destroyed during the election and the number of ballots remaining not voted. The commissioners of election shall also ascertain from the poll books the number of persons who voted and shall report, over their signatures, to the clerk of the county court, the number of votes cast, the number of ballots destroyed during the election and the number of ballots not voted. All unused ballots shall at the same
time be returned to the clerk of the county court, who
shall immediately destroy them by fire or otherwise.

Each commissioner who is a member of an election
board which fails to account for every ballot delivered
to it shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one thousand
dollars or confined in the county jail for not more than
one year, or both.

The board of ballot commissioners of each county, or
the chairman thereof, shall preserve the ballots that are
left over in their hands, after supplying the precincts as
provided, until the close of the polls on the day of elec-
tion, and such ballots shall then be destroyed by such
board, or the chairman thereof, by fire or otherwise.

Sec. 37. Restrictions on Presence and Conduct at Polls.—

No person, except the election officers and voters while
going to the election room to vote and returning there-
from, shall be or remain within sixty feet of such room
while the polls are open; but this section shall not apply
to persons living or carrying on business within that
distance of the election room, while in the discharge of
their legitimate business, or to persons whose business
requires them to pass and repass within sixty feet of
such room.

Not more than one voter for each compartment or
booth at the precinct shall be allowed in the election room
at one time, and no person shall approach nearer than
five feet to any booth or compartment while the election
is being held, except the voters to prepare their ballots, or
the poll clerks when called on by a voter to assist in the
preparation of his ballot, and no person, other than elec-
tion officers and voters engaged in receiving, preparing
and depositing their ballots, shall be permitted to be
within five feet of any ballot box, except by authority of
the board of election commissioners, and then only for
the purpose of keeping order and enforcing the law.

Not more than one person shall be permitted to occupy
any booth or compartment at one time; and no person
shall remain in or occupy a booth or compartment longer
than may be necessary to prepare his ballot, and in no
event longer than five minutes. No voter, or person offering to vote, shall hold any conversation or communication with any person other than the poll clerks or commissioners of election, while in the election room.

The provisions of this section shall not apply to persons rendering assistance to blind voters as provided in section thirty-four of this article.

Sec. 38. Disorder at Polls; Procedure.—The commissioners of election shall preserve order at, and in the vicinity of, the polls, and keep the way to the polls open and free from obstruction, and may direct disorderly persons to be removed therefrom, and, if necessary and proper, to be taken and held in custody until sunrise of the next day, or for any shorter time, which may be done by any sheriff or constable or other person or persons designated by the commissioners of election. For such purpose no warrant or authority in writing shall be necessary. The jail of the county or other place designated by the commissioners of election may be used as the place of custody. But any person so arrested shall have an opportunity to vote, if he be entitled to do so, before he shall be committed to jail, if he so desires and shall be prepared to do so promptly.

Sec. 39. Illegal Voting; Affidavit; Arrest; Procedure.—If at any time during the election any qualified voter shall make affidavit, before a commissioner of election, that any person who has voted is an illegal voter in such precinct, the person accused shall at once be arrested by any constable or other person designated by the election commissioners to make the arrest, and by him delivered to the civil authorities. Any person desiring to make such affidavit shall be admitted to the election room for that purpose. Immediately after the close of the election, the commissioners of election shall deliver such affidavit to some justice of the peace in the magisterial district, who shall proceed thereon as if the affidavit had been made before him.

Sec. 40. Disposition of Other Affidavits Used at Polls; Procedure; Grand Jury Action.—All affidavits provided for in this chapter, to be used on the day of election, at
the several polling places, shall, unless in this chapter
otherwise directed, at the close of the count, be placed
in a strong and durable envelope, by the commissioners
of election, and be securely sealed by them, and each of
them shall indorse his name on the back of such envelope,
which shall, within two days after the election, be de-
ivered by one of the commissioners of election to the
clerk of the circuit court of the county, whose duty it shall
be to carefully preserve the same and deliver it, with the
seal unbroken, to the foreman of the grand jury when
next in session. It shall be the duty of such grand jury
to inquire into the truth or falsity of such affidavits.

Sec. 41. Challenged Voter Procedures; Counting of
Challenged Voters' Ballots; Ballots of Election Officials.—
It shall be the duty of the members of the receiving board,
jointly or severally, to challenge the right of any person
requesting a ballot to vote in any election, if such person's
registration record is not available at the time of the elec-
tion, or if the signature written by the person in the poll
book does not correspond with the signature purported to
be his on the registration record, or if the registration rec-
ord of such person indicates any other legal disqualifica-
tion.

Any person so challenged shall nevertheless be per-
mitted to vote in the election, but for that purpose he shall
be furnished an official ballot not endorsed by the poll
clers. In lieu of such endorsements, the poll clerks shall
fill and sign an appropriate form indicating the challenge
and the reason thereof, and the name or names of the
challengers. Such form shall be securely attached to the
voter's ballot and deposited together with the ballot in a
separate box or envelope marked "challenged ballots."

The ballot of any voter so challenged shall not be
counted by the election officials. The county court shall,
on its own motion, at the time of canvassing of the elec-
tion returns, sit in session to determine the validity of
such challenges. If the county court shall determine that
the challenges are unfounded the ballot of each chal-
 lenged voter, if otherwise valid, shall be counted and
tallied together with the regular ballots cast in the elec-
tion. In such determinations the county court shall dis-
regard technical errors, omissions or oversights, if it can
reasonably be ascertained that the challenged voter was
entitled to vote.

Any person duly appointed as an election commissioner
or clerk under the provisions of section twenty-eight of
this article and who serves in such capacity in a precinct
other than the precinct in which such person is legally
entitled to vote, may cast a challenged ballot in the pre-
cinct in which such person is serving as a commissioner
or clerk, and such ballot shall not be deemed invalid for
the sole reason of having been cast in a precinct other
than the precinct in which such person is legally entitled
to vote, and the county court shall record the challenged
ballot on the voter's permanent registration record.

Sec. 42. Time Off for Voting.—Every person entitled
to vote at any election who may be employed by any
person, company, or corporation on the day on which
such election shall be held in this state, shall, on written
demand of such employee, made at least three days prior
thereto, be given a period of not more than three hours, if
necessary, between the opening and the closing of the
polls on such day, for the purpose of enabling such person
to repair to the place of voting to cast his vote and return,
without liability to any penalty or deduction from his
usual salary or wages on account of such absence, except
that any employee, who has three or more hours of his
own time away from his work or place of employment at
any time between the hours of the opening and the closing
of the polls on election day and who fails or neglects to
vote or elects not to vote during such free time away from
his work or employment, may be subject to wage or salary
deductions for the time actually absent from his work or
employment for voting in such election.

In essential government, health, hospital, transportation
and communication services and in production, manufac-
turing and processing works requiring continuity in oper-
ation, the employer may, upon receipt of such written de-
mand for voting time off, arrange and schedule a calendar
of time off for any and all of his employees for voting so
as to avoid impairment or disruption of essential services
and operations, but every such schedule or calendar of
time off for voting so arranged shall provide ample and
convenient time and opportunity for each employee of
such services or works to cast his vote as herein provided.

Sec. 43. Disposition of Miscellaneous Election Papers.—
At the expiration of one year after any election, the af-
davits taken and returned by any registrar or any election
officer, applications for absent voters' ballots, re-
jected absent voters' ballots, and certificates of nomina-
tions of candidates shall be destroyed. At the expiration
of two years from the date of any election the written
designations of election officers and of ballot commission-
ers shall be destroyed. If the further preservation of any
of the documents mentioned in this section shall be re-
quired by the order of the court, the same shall be de-
stroyed at the expiration of the time fixed for the further
preservation thereof by such order.

Sec. 44. Compensation of Election Officials; Expenses.—
Each ballot commissioner shall be allowed and paid a
sum, to be fixed by the county court, not exceeding twen-
ty dollars for each day he shall serve as such, but in no
case shall a ballot commissioner receive allowance for
more than ten days' services for any one primary, general
or special election. Each commissioner of election and
poll clerk shall be allowed and paid a sum, to be fixed by
the county court, not exceeding ten dollars for one day's
services for attending the school of instructions for elec-
tion officials and a sum not exceeding twenty dollars for
his services at any one election. The commissioners of
election obtaining and delivering the election supplies,
as provided in section twenty-four of this article, and re-
turning them as provided in articles five and six of this
chapter, shall be allowed and paid an additional sum,
likewise fixed by the county court, not exceeding ten
dollars for all such services at any one election and, in
addition, shall be allowed and paid mileage at the rate of
seven cents per mile necessarily traveled in the perform-
ance of such services. The compensation of election of-

Sec. 45. Court Proceedings to Compel Performance of Duties, etc.—Any officer or person, upon whom any duty is devolved by this chapter, may be compelled to perform the same by writ of mandamus. The circuit courts, or the judges thereof in vacation, shall have jurisdiction by such writ, and shall, upon affidavit filed, showing a proper case, issue such writ, to be returned, heard and determined without unnecessary delay. If a circuit court, or a judge thereof in vacation, shall proceed against any board of canvassers by mandamus, or otherwise, to control, in any manner, the action of such board in the performance of its duties, under the provisions of this article, in any case concerning the election of a member of the house of delegates, or a state senator, and shall fail to enter a final order in such proceedings, settling all questions presented therein within fifteen days from the commencement of such proceedings, unless delayed by proceedings in the supreme court of appeals, or a judge thereof in vacation, the same shall thereupon be dismissed; and such board shall convene within not less than five days thereafter, and proceed forthwith to the performance of its duties under the provisions of this article. A mandamus shall lie from the supreme court of appeals, or any one of the judges thereof in vacation, returnable before said court, to compel any officer herein to do and perform legally any duty herein required of him. And respecting the election of a member of the house of delegates and state senator, a writ of certiorari, mandamus or prohibition shall lie from the supreme court of appeals, or a judge thereof in vacation, returnable before said court, to correct any error of law, and review and correct the proceedings of any circuit court, or the judge thereof in vacation, or any board of canvassers. When any such writ of mandamus, prohibition or certiorari shall be issued by said court, or a judge thereof in vacation, it shall be the duty of said court to convene in special session at the state capital, not later than ten days from the date of the writ, to hear and de-
termine all matters arising upon such writ, which matters
shall have precedence over all other business pending in
said court, and be determined within five days from the
assembling thereof, and, in any case, in ample time for
the case to be remanded and final action taken by the
circuit court and the board of canvassers, in order that
such board may perform its duty and issue the certificate
of election before the second Wednesday in January, then
next following. In mandamus and prohibition proceedings under this section the same may be upon affidavit
alone.

Article 2. Registration of Voters.

Section
1. Permanent registration law.
2. Voter registration requirements.
3. Registration, cancellation and reinstatement.
4. Election commission continued; composition; chairman; traveling expenses.
5. Qualifications of members of commission.
6. Terms of office of commission members.
7. Commission's office and meetings.
8. Commission powers and duties.
9. Election rules, powers and duties of secretary of state; exercise of powers by appointees.
10. County court duties and powers.
11. Appointment of registrars; qualifications and duties.
12. Additional duties of registrars and clerks; checking; notices.
15. Registration record files.
16. Custody of registration records; public inspection.
17. Administration of oaths.
18. Party affiliation; primary and nonpartisan voting.
19. Voter registration forms.
20. Completing registration forms; registration receipts.
21. Quadrennial and biennial check-up.
22. Registration in clerk's office.
23. Absentee registration.
24. Registration of persons unable to write.
25. Post-registration disabilities.
27. Registration transfers.
28. Procedure on change of registered voter's name.
29. Challenges; notice; cancellation of registration.
30. Time of registration prior to election; changes.
31. Registration when precincts changed; re-registration when deemed necessary.
32. Preparation and furnishing of precinct voter lists.
33. Hearings on registration issues in county court; review in circuit and supreme court; sessions of court.
34. County court appropriations.
35. Unlawful registration or rejection of voter; penalties.
36. Neglect of duty by registration officers; penalties.
37. Alteration or destruction of records; penalties.
38. Withholding information; penalties.
Section 1. Permanent Registration Law.—This article, providing a permanent and uniform system for the registration of the voters of the state of West Virginia, may be cited as the "Permanent Registration Law."

Sec. 2. Voter Registration Requirements.—No voter otherwise qualified shall be permitted to vote at any election unless he shall have been duly registered or shall have placed himself within the "challenged voters" provision of this chapter, and only those persons who possess the constitutional and statutory qualifications for voting shall be permitted to register, except that minors, otherwise qualified, who shall have attained the age of twenty-one years by the time of the next ensuing election, may be permitted to register.

Sec. 3. Registration, Cancellation and Reinstatement.—A permanent registration system shall hereby be established which shall be uniform throughout the state and all of its subdivisions. No voter so registered shall be required to register again for any election while he continues to reside at the same address, or, having moved from such address, is properly transferred according to the provisions of section twenty-seven of this article, unless his registration is cancelled as provided in this article. If a voter fails to vote at least once during a period covering two primary and general elections, his registration shall be cancelled and he shall, by letter, be given proper notice thereof by the clerk of the county court, to the effect that in order to vote he must register again or execute and file, not later than thirty days before the next primary or general election, with the clerk, an affidavit, the form of which shall be prescribed by the secretary of state, stating that he desires to be reinstated as a qualified voter at the same address and the clerk shall replace the registration card of the voter in the registration records. A blank form of such affidavit shall be included with and accompany the aforesaid notice to the voter.

Sec. 4. Election Commission Continued; Composition; Chairman; Traveling Expenses.—The "State Election
Commission," heretofore created, is hereby continued and shall be composed of five members, appointed by the governor, by and with the advice and consent of the senate. The commission shall, from this membership elect a chairman for a term of two years. Each member of the commission shall receive his actual and necessary traveling expense incurred in the performance of his duties.

Sec. 5. Qualifications of Members of Commission.—No member of the commission shall be a candidate for or hold any public office other than that of membership in the commission; nor shall he be a member of any committee of a political party. At least one member shall be selected with special reference to his expert knowledge as a student of the problems of public elections. Of the remaining four members, not more than two shall be affiliated with the same major political party. In case a member becomes a candidate for or is appointed to any other public office or political committee, his office as member of the commission shall be deemed immediately vacated.

Sec. 6. Terms of Office of Commission Members.—The terms of office of the members of the commission shall be six years. Members in office when this section becomes effective shall continue in office until their terms expire or their membership is otherwise vacated. Appointments to fill vacancies shall be for the unexpired terms. As present terms expire, two members shall be appointed for terms of six years commencing on the fourth day of June, one thousand nine hundred sixty-three, two members shall be appointed for terms of six years commencing on the fourth day of June, one thousand nine hundred sixty-five, and one member shall be appointed for a term of six years commencing on the fourth day of June, one thousand nine hundred sixty-seven, and successively every six years thereafter.

Sec. 7. Commission’s Office and Meetings.—The office and place of meeting of the commission shall be the office of the secretary of state in the state capitol.

The commission shall hold such meetings as may be called by the chairman, the governor, or the secretary of state.
Sec. 8. Commission Powers and Duties.—The commission shall serve as a body advisory to the secretary of state, and, as such, shall have the following powers and duties:

(1) To recommend policies and practices to the secretary of state, relating to his duties as chief registration official and election officer, imposed by law;

(2) To investigate the work of the secretary of state, and for this purpose to have access at reasonable times to pertinent records, books, papers and documents;

(3) To consider and study the election practices of other jurisdictions, with a view to determining the techniques used in eliminating fraud in elections and in simplifying election procedure;

(4) To advise or make recommendations to the governor relative to election practices and policy in the state; and

(5) To keep minutes of the transactions of each session, regular or special, which shall be public records and filed with the secretary of state.

Sec. 9. Election Rules, Powers and Duties of Secretary of State; Exercise of Powers by Appointees.—The secretary of state shall be the chief registration official of the state. He shall have authority, upon consultation with the state election commission, of which he is hereby created an ex officio member, to make, amend and rescind such rules, regulations and orders as may be necessary to carry out the policy of the legislature, as contained in this article. It shall be the duty of all registration officials to abide by such rules, regulations and orders, which shall include:

(a) Uniform rules of procedure for registrars and other registration officials in the performance of their duties, as to time and manner of performance;

(b) Uniform rules for the purging of registration records;

(c) Uniform rules for challenging registrants; and

(d) Any other rules, regulations, or directions necessary to standardize and make effective the administration of the provisions of the article.
It shall be his further duty to advise with registration officials; to furnish to the registration officials a sufficient number of indexed copies of the current registration laws of West Virginia and the administrative orders issued thereunder; to investigate the administration of registration laws, frauds, and irregularities in any registration; to report violations of registration laws to the appropriate prosecuting officials, and to prepare an annual report of registration.

The secretary of state shall also have the power to issue subpoenas, administer oaths and affirmations, summon witnesses, compel the production of books, papers, records and other evidence, and fix the time and place for hearing any matters relating to the administration and enforcement of this article. In case of disobedience to a subpoena or other process, he may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses and the production of papers, books and documents.

All powers and duties vested in the secretary of state under this article may be exercised by appointees of the secretary of state at his discretion, but the secretary of state shall be responsible for their acts.

Sec. 10. County Court Duties and Powers.—Subject to the authority of the secretary of state, the county court shall be the chief registration authority in each respective county and all subdivisions therein, and shall supervise the county clerk and registrars in the performance of their respective duties.

The county court shall have power on its own motion to summon and to interrogate any person concerning the registration of voters, to investigate any irregularities in registration, to summon and examine witnesses, to require the production of any relevant books and papers, and to conduct hearings on any matters relating to registration of voters.

Sec. 11. Appointment of Registrars; Qualifications and Duties.—The county court of each county shall, not less than eighteen nor more than twenty weeks prior to the date of a state-wide primary election, appoint two com-
petent persons, for one or more but not to exceed ten voting precincts in the county, to act as registrars for the purpose of making a biennial or quadrennial check-up required by this article. No person shall be eligible to appointment as a registrar, or in any way act as such, if he has been convicted of a felony or if he holds any elective or appointive office, or is a public employee, under the laws of this state or of the United States; or cannot read or write the English language; or is a candidate to be voted for at such election. If any such registrar shall fail or refuse to serve or is properly dismissed, the vacancy shall be filled either by the county court or by the clerk thereof in vacation, in the manner provided for the appointment of registrars. Each registrar, before entering upon the discharge of his duties, shall take an oath that he will perform the duties of the office to the best of his ability, which oath shall be filed in the office of the clerk of the county court.

An equal number of such registrars shall be selected from the two political parties which at the last preceding election, cast the highest number and next highest number of votes in the county in which the election is to be held. The county court shall, at least four weeks prior to making such appointment, request the county executive committee of each of the said two political parties to submit a list of names, equal to one half of the total number to be appointed, of persons qualified to act as registrars; and the county court shall, if such lists are submitted, appoint the respective registrars therefrom, and shall notify each registrar of his appointment. Every such list so presented shall be filed and preserved for one year by the clerk of such court in his office. Any and every act performed by any registrar under the provisions of this article shall be void unless performed in conjunction with a registrar of the opposite political party at the same time and place.

Before acting, all such registrars shall attend a session, or sessions, of instruction by the clerk of the county court, or some person designated by him, concerning the performance of their duties.
Immediately following such instruction the clerk of the county court shall deliver to the registrars a copy of the laws and regulations relating to registration of voters and all necessary forms and other supplies, including a certified list of all registered voters within the precinct or precincts for which such registrars were appointed, upon such form as may be prescribed by the secretary of state. Such registrars shall thereupon proceed together to make a house-to-house canvass in their precincts for the purpose of making the biennial or quadrennial check-up required by section twenty-one of this article. In making such check-up the registrars shall not again register any person who is already registered in such precinct, but shall determine whether or not such person is duly registered and qualified to vote therein.

Sec. 12. Additional Duties of Registrars and Clerks; Checking; Notices.—Upon the completion of the biennial or quadrennial check-up, the registrars shall return the records and lists to the clerk of the county court, together with an affidavit that the returns, records and lists returned to the clerk are true and correct to the best of their knowledge and belief. The clerk of the county court shall make the necessary changes in his other registration records. The list checked by the registrars in each precinct shall be compared with the register of deaths kept by the clerk of the county court in his office. Each person named in the list who is not shown to have been found and so checked by the registrars and whose death is not shown on such register shall be given proper notice by the clerk of the county court that his registration has been cancelled and that in order to vote he must register again. The notice shall be mailed to such person’s last address appearing on the registration record.

The clerk of the county court is authorized to publish such notices as may be proper in his opinion to advise the electorate of the respective dates after which transfers and registration, and changes of registration, may not be made with respect to any general or primary election.

Sec. 13. Compensation of Registrars.—As compensation for his services during the house-to-house canvass each
registrar shall be paid at a rate, to be fixed by the county
court, of not less than ten nor more than twenty cents
for each person newly registered; and for each transfer
and for each previous registration checked, whether
cancelled or not, he shall be paid not less than eight nor
more than twelve cents. Each registrar shall be paid not
more than ten dollars for each day he attends a session
of instruction for registrars conducted by the clerk of
the county court.

Registrars shall be paid for their services by the county
court, but part or all of the compensation of any registrar
may be withheld by the county court until such time as
the county court shall have agreed that the duties of such
registrar have been fulfilled.

Sec. 14. Clerical Assistance.—The county court shall
have power to provide funds for the reasonable compen-
sation of clerical assistance needed by the clerk of the
county court in the performance of his duties in the
administration of voter registration.

Sec. 15. Registration Record Files.—The registration
records to be used in county-state elections shall be kept
in a separate file and arranged according to precinct,
street and sequence of house, apartment or room num-
bers, where possible. A duplicate set of these registra-
tion records shall be made and kept in a separate file,
and shall be arranged in alphabetical order. Such file
shall herein be referred to as the “alphabet file.”

The registration records to be used in municipal elec-
tions shall be kept in a separate file and arranged, where
possible, according to precinct, street and sequence of
house, apartment or room numbers.

In any case where the county magisterial district and
municipal precinct lines coincide in such manner that
all the registrants entitled to vote in any county-state
election and the registrants entitled to vote in any mu-
nicipal election in any precinct are the same it shall not
be necessary for the registrar to maintain a separate
record for municipal elections, unless the governing body
of the municipality demands it by formal notice directed
Sec. 16. Custody of Registration Records; Public Inspection.—The registration records shall not be removed from the custody of the county court except for use in an election, or by the order of a court of record. The registration records shall be open for public inspection under reasonable regulations prescribed by the county court.

Sec. 17. Administration of Oaths.—Whenever in any matter concerning registration an oath or affirmation is required, the clerk of the county court and registrars shall have the power to administer the same.

Sec. 18. Party Affiliation; Primary and Nonpartisan Voting.—Any person claiming the right to be registered shall be requested to state the name of the political party with which he desires to affiliate, and such affiliation shall be indicated on the registration record in the proper space. Any person desiring to be registered, who declines to state any preference for party affiliation, shall be registered as an “independent” and such person, while such registration continues, shall not be permitted to vote a political party ballot in any primary election, but he shall be entitled to vote any nonpartisan ballots for candidates or on public questions submitted to the voters at such primary election.

Sec. 19. Voter Registration Forms.—The voter registration forms for county-state elections and for municipal elections shall be identical, except for color. The forms shall be prescribed by the secretary of state and may be by him revised and supplemented from time to time so as to provide thereon for a continued record of voter registration and voter election participation. The forms shall be substantially as follows:
### Voting Record Form

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</tbody>
</table>

(As the elector votes record fact of voting with a "v" in proper space, except at primaries record fact of voting by use of party initial or initials.)

**PARTY AFFILIATION:**

**DATE:**

**Record of Change of Address**

<table>
<thead>
<tr>
<th>Magisterial District</th>
<th>Precinct</th>
<th>Ward</th>
<th>Address</th>
<th>Apt./Room</th>
<th>Date</th>
</tr>
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</tbody>
</table>

**State of West Virginia, County of:**

I, __________________________, being duly sworn on oath (affirmation) do swear (affirm) that the statements herein contained are, to the best of my knowledge and belief, true, and that I am legally qualified to vote.

**Signature of Applicant**

Subscribed and sworn before me this _______ day of ________ 19____

**Signature of Registrar**

**Signature of Registrar**

(If registration of absentee)

**Signature of Person Taking Affidavit**

(If registration by clerk)

**Signature of Clerk of County Court**
Sec. 20. Completing Registration Forms; Registration Receipts.—Each applicant for voter registration shall fill in and complete only one registration form, except in those cases where a separate record for municipal elections is required, in which cases those registrants who are required to be listed in separate municipal record lists shall fill in and complete two forms. The signature of the applicant on all forms shall be written in ink. Upon the completion of the registration of any person, the registration official shall issue to such person a signed and dated receipt of such registration. The form for such receipt shall be prescribed by the secretary of state.

Sec. 21. Quadrennial and Biennial Check-up.—There shall be a quadrennial check-up in every county in the state, beginning with the year one thousand nine hundred sixty-four and every four years subsequent thereto, and the registrars, according to directions prescribed by the secretary of state and as provided in sections eleven and twelve of this article, shall proceed to register the names of all persons not registered but who are qualified to register, and shall also check and, if necessary, alter, amend, correct or cancel the registration records of the voters of the respective precincts so as to provide a complete and accurate record of all persons qualified to vote. During the year one thousand nine hundred sixty-six and every two years subsequent thereto, except in those years in which a quadrennial check-up is held as aforesaid, there may be a biennial check-up for voter registration if in the discretion of the county court such check-up is deemed necessary and advisable.

Sec. 22. Registration in Clerk’s Office.—The clerk of the county court may register any qualified person as a voter by having him fill in and complete the prescribed voter registration form and having him sign same under oath or affirmation. The clerk, upon proper proof, may alter, amend, correct, or cancel the registration record of any voter. Such registration or alteration, amendment, correction or cancellation of registration records shall be carried on throughout the year. If found necessary, the county court may order and direct the clerk of the county
court to maintain additional office hours in the evening
or at other proper times and places for accommodation
of voter registration.

Sec. 23. Absentee Registration.—Any person who pos-
sesses the qualifications for registration, but who is absent
from the state or county on account of occupation, or for
any other necessary cause, including service in the armed
forces of the United States, may at any time register by
mail according to the procedure prescribed by the secre-
tary of state.

Sec. 24. Registration of Persons Unable to Write.—If
an applicant, although physically able, shall allege in-
ability to sign his name, the registrar or clerk of the
county court shall require him to present an affidavit of
a qualified voter within the same county who is person-
ally acquainted with the applicant. Such voter shall,
in his affidavit, state his own residence and affirm that
the statements made by the applicant for registration are
true. Upon the presentation of such affidavit, the ap-
licant shall be permitted to sign the registration form
by making his mark.

If an applicant is literate, but physically unable to sign
his name, the registrar or clerk of the county court shall
insert the name of the applicant on the registration form
together with a notation of the nature of the disability.

Sec. 25. Post-Registration Disabilities.—Any voter,
who has since the time of registration suffered a physical
disability which renders him unable to sign his name,
may personally make application under oath to the clerk
of the county court to have such fact entered on his regis-
tration record, together with a statement of the exact
nature of his physical disability, and such entry shall be
made accordingly. If such applicant is physically unable
to appear before the clerk of the county court to cause
such change to be made on the registration record, he
may request the clerk of the county court to mail him
the necessary forms, and the clerk of the county court
upon receipt of such forms properly completed, together
with a physician’s certificate affirming such disability,
shall alter the registration record of the voter accordingly.
When the clerk of the county court shall ascertain that any voter, who has declared himself physically disabled or illiterate, no longer suffers from such physical disability or illiteracy, he shall forthwith cancel on the registration record the entry relating to physical disability or illiteracy and shall notify such voter by mail of his action.

Sec. 26. Registration of Naturalized Citizens.—Any naturalized citizen, claiming the right to register, shall produce his naturalization papers or a certificate under the seal of the court in which his naturalization was effected. Any person, claiming citizenship by reason of the naturalization of his parent during his minority, may be registered either by the production of his parent's original naturalization papers, or a certified copy thereof, or a certificate of the court. Any woman claiming citizenship by reason of her marriage prior to September twenty-second, one thousand nine hundred twenty-two, may be registered by the production of her husband's original naturalization papers, or a certified copy thereof, or a certificate of the court in which naturalization was effected.

Sec. 27. Registration Transfers.—Whenever a voter removes his residence from one place to another within the same county he shall request that the change be made on his registration record. Such request shall be made by filling in, and, if he is able, signing under oath or affirmation the necessary form, which may be procured in person or by mail from the office of the clerk of the county court, or from the registrars during the biennial check-up. The form of such notice shall be prescribed by the secretary of state.

Upon receipt of such notice the clerk of the county court shall cause the signature thereon to be compared with the signature of the applicant upon his registration card and, if such signatures correspond, shall make entry of such change of residence upon all the registration records and the necessary transfers in the files. If the clerk of the county court is not satisfied as to the genuineness of the signature on the notice of change of residence, and
if the right of such applicant to register is challenged according to the procedure herein prescribed, such transfer shall not be made.

Transfers of the registration record may be made throughout the year except during the thirty days immediately preceding any election, and if any voter shall move from one place to another within the county within the thirty-day period, he shall, for that election only, vote in the precinct from which he moved.

Sec. 28. Procedure on Change of Registered Voter's Name.—Whenever a voter, previously registered, shall change his name, such person shall be required to register again. For this purpose such person may register by mail in the same manner as an absentee registrant, according to the procedure prescribed in section twenty-three of this article. Upon such registration, the clerk of the county court shall cancel the registration record bearing the voter's former name. When such a change of name is made during the thirty days immediately preceding any election, such voter, if duly registered, may vote at the election under his former name.

Sec. 29. Challenges; Notice; Cancellation of Registration.—Any person claiming the right to be registered as a voter may be challenged by the clerk of the county court or by any registrar of the county or by the chairman of any political party committee or any voter who shall appear in person at the clerk's office. Such challenge shall be entered upon a form prescribed by the secretary of state and shall be filed as a matter of record in the office of the clerk of the county court. Upon the receipt and filing of such challenge, the clerk of the county court shall mail to the person so challenged a notice thereof requesting such person to appear in person during business hours at the clerk's office within a period of thirty days from and after the mailing of such notice to show cause, if any he can, why such challenge should be removed. The form of the notice of challenge shall be prescribed by the secretary of state and shall be mailed by registered or certified mail with return receipt requested. Failure of the challenged person to appear and show cause within the
prescribed time shall constitute immediate cancellation
of his voter registration, if any, theretofore effected and
shall be prima facie evidence of his ineligibility to be
registered as a voter. If he does timely appear and show
cause, the clerk shall determine his eligibility to be regis-
tered as a voter as in any other case.

Sec. 30. Time of Registration Prior to Election;
Changes.—No person may vote in an election when he
has registered or his voter registration has been altered,
amended or corrected within a period of thirty days next
preceding such election, but this inhibition shall not pre-
vent, during such period of thirty days, additional regis-
trations and changes in voter registrations with reference
to future elections. If, during such period of thirty days
preceding an election, a voter is registered or his voter
registration is altered, amended or corrected, he shall not
be permitted or qualified to vote at such election.

Sec. 31. Registration When Precincts Changed; Re-Reg-
istration When Deemed Necessary.—Whenever a new
precinct has been created or the boundaries of any pre-
cinct have been changed, the clerk of the county court
shall correct and transfer accordingly the registration rec-
ords of the voters whose voting precincts have been thus
changed. The registration of a voter shall not be invali-
dated by such alteration or transfer.

Whenever the county court shall deem it necessary be-
cause of destruction of records or any other emergency,
it shall have the power to and may order a re-registration
of the voters in any precinct.

Sec. 32. Preparation and Furnishing of Precinct Voter
Lists.—Prior to any election the clerk of the county court
shall, upon request, prepare lists which may be photo-
stated, typed, printed, or mimeographed at the discretion
of such clerk. Such lists shall contain exact copies of the
names, addresses and political affiliation of the registered
voters in the order of their arrangement in the respective
county or municipal precinct registration files. Such copies
shall be known as the "precinct registration lists."

Any person, municipality, corporation, or other entity
may obtain copies of precinct registration lists containing
the name, address and political affiliation of each regis-
tered voter in such precinct from the clerk of the county
court, who shall charge a fee of one cent per name fur-
nished. The fees received by the clerk of the county court
shall be kept in a separate fund under his supervision for
the purpose of defraying the cost of the preparation of
the precinct lists. Any unexpended balance in the fund
shall be transferred to the general fund of the county
court.

Sec. 33. Hearings on Registration Issues in County
Court; Review in Circuit and Supreme Court; Sessions of
Court.—Any person affected adversely in regard to any
matter pertaining to his registration may obtain a hearing
before the county court. The county court shall preserve
and keep all record evidence offered at such hearing and
shall have all oral evidence heard reduced to writing and
preserved and kept with other records. From the decision
of the county court such person or the person challenging
his registration shall have, within thirty days, an appeal
of right by petition to the circuit court of the county. Such
appeal may be taken by petition without formal bill of
exceptions or certification. The clerk of the county court
shall give reasonable notice of such appeal thereof in writ-
ing to the party or parties to the proceedings.

The circuit court upon such appeal shall consider only
the record before the county court, which record shall
consist of the evidence considered by the county court in
reaching its decision. Such record shall be properly au-
thenticated by the clerk of the county court.

The circuit court may affirm the order of the county
court, whether the order be affirmative or negative; but if
it deems such order not to be reasonably justified by the
evidence considered, it may reverse such orders of the
county court in whole or in part as it deems just and right;
and if it deems the evidence considered by the county
court in reaching its decision insufficient, it may remand
the proceedings to the county court for further hearing.
Any such order or orders of the circuit court shall be cer-
tified to the county court.
Any party to such appeal, may, within thirty days after the date of a final order by the circuit court, apply for an appeal to the supreme court of appeals, which may grant or refuse such appeal at its discretion. The supreme court of appeals shall have jurisdiction to hear and determine the appeal upon the record before the circuit court, and to enter such order as it may find that the circuit court should have entered.

It shall be the duty of the circuit court and the supreme court of appeals, in order to expedite registration and election procedure, to hold such sessions as may be necessary to determine any cases involving the registration of voters.

Judges of the circuit court and supreme court of appeals in vacation shall have the same power as that prescribed in this section for their respective courts.

Sec. 34. County Court Appropriations.—The county court shall budget the funds necessary for the payment of the compensation of registrars and other assistants and employees, and the fees of witnesses, and likewise for preparing, securing, distributing notices, stationery and other supplies, and other services which are necessary for the purpose of this article. The county court shall not include in its budget any sum for the purpose of preparing or printing precinct lists. Any unexpended balances of any appropriation heretofore made by the county court for the purpose of carrying out any provision of the existing registration law shall be transferred to and made available to the county court for the expenses of carrying out the provisions of this article.

Sec. 35. Unlawful Registration or Rejection of Voter; Penalties.—Any registrar or clerk of the county court who knowingly registers or permits to be registered a person not lawfully entitled to be registered, or who knowingly refuses to register a person entitled to be registered, or who knowingly assists in preventing such person from being registered, or who inserts or intentionally permits to be inserted a name or other entries in any registration form, knowing or having reason to know that such entry should not be made, shall be guilty of a misdemeanor, and,
upon conviction, shall be fined not more than one thousand dollars or confined in the county jail for not more than one year, or both, at the discretion of the court.

Any person who registers or applies to be registered, or who applies for a change of residence address, knowing or having reason to know that he is not entitled to be registered, or to have his residence address changed on his registration record, or any person who declares as his address a place or address which he knows is not his legal residence, or who impersonates another in an application for registration, or who knowingly offers false naturalization papers to establish his claim to be registered, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than one thousand dollars or confined in the county jail for not more than one year, or both, at the discretion of the court.

Sec. 36. Neglect of Duty by Registration Officers; Penalties.—Any registrar or clerk of the county court or their authorized deputies or any other persons upon whom a duty is laid by the permanent registration law, who shall wilfully delay, neglect, or refuse to perform such duty, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than one thousand dollars or confined in the county jail for not more than one year, or both, at the discretion of the court.

Sec. 37. Alteration or Destruction of Records; Penalties.—Any person who wrongfully and intentionally inserts or permits to be wrongfully inserted any name or material entry on any registration form or any other record in connection with registration; or who wrongfully alters or destroys an entry which has been duly made; or who wrongfully takes and removes any such registration form, or any other record authorized or required in connection with registration, from the custody of any person having lawful charge thereof, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than one thousand dollars or confined in the county jail for not more than one year, or both, at the discretion of the court.

Sec. 38. Withholding Information; Penalties.—Any per-
son who neglects or refuses to furnish to the secretary of
state, the county court, or the clerk of the county court
any information which they are authorized to obtain in
connection with registration, or to exhibit any records,
papers, or documents herein authorized to be inspected
by them, shall be guilty of a misdemeanor, and, upon con-
viction thereof shall be fined not more than one thousand
dollars, or confined in the county jail for not more than
one year, or both, at the discretion of the court.

Sec. 39. Interference with Voter Registration; Penalties.—Any person who intentionally interferes with, hin-
ders, or delays another in the performance of any act
or duty in connection with registration or any person who
knowingly and wilfully prevents another from being duly
registered shall be guilty of a misdemeanor, and, upon
conviction, shall be fined not more than one thousand dol-
lars or confined in the county jail for not more than one
year, or both, at the discretion of the court.

Sec. 40. Damaging or Destroying Registration Records;
Penalties.—Any person who without authority under the
provisions of this article destroys or attempts to destroy
any registration document or record, or who removes or
attempts to remove such registration document or record,
shall be guilty of a misdemeanor, and, upon conviction,
shall be fined not less than one hundred dollars nor more
than one thousand dollars or confined in the county jail
for not more than one year, or both, at the discretion of
the court.

Article 3. Voting by Absentees.

Section
1. Persons eligible to vote as absentees.
2. Application for absent voter ballots; time.
3. Form of application; declaration; physician's statement as to dis-
ability.
4. Clerk's duties and records on absentee's application and ballots.
5. Mailing of ballots; time.
6. Absent voter's ballot envelope; declaration.
7. Marking and mailing ballot by absent voter.
8. Clerk's receipt of and action on absent voters' ballots.
9. Delivery of absent voters' ballots to election officers.
10. Return of absent voter and ballot to precinct.
11. Action when absent voter dies.
12. Preparation, number and handling of absent voters' ballots.
13. Clerk's additional duties and responsibilities; assistance to voters
unable to write.
Section 1. Persons Eligible to Vote as Absentees.—Any qualified voter of the State of West Virginia, being duly registered, (a) who by reason of the nature of his employment, business, or on account of other unavoidable causes, expects to be absent from the county on the date of any primary, general or special election, (b) who by reason of physical disability, illness or injury will be unable to vote in person at the polls at such election as otherwise required by law, (c) who is a student attending any college or university, or is the spouse of any such student, outside the county wherein he or she is legally registered to vote, or (d) who is a member of any branch of the armed services of the United States and who in the performance of his duties expects to be absent on election day from the county in which he is registered, or his wife or husband or other member of his family living with such person, may vote by absent voter’s ballot as provided in this article, at any such election.

The provisions of this article shall apply only to voters necessarily absent from the county or from the polls on election day for the reasons specified in this section.

Sec. 2. Application for Absent Voter Ballots; Time.—Any voter, as defined and designated in section one of this article, expecting to be absent from the county or from the polls on the day of any primary, general or special election, may, not more than sixty days prior to the date of any such election, make application to the clerk of the circuit court of the county in which his voting precinct is situated for an official absent voter’s ballot or ballots to be voted at such election, except that the clerk shall not receive and honor any such application for absent voter ballots for a primary or general election made to him after the Saturday next preceding the date of any such primary or general election nor after regular business hours on the third day next preceding the date of any special election. In computing such third day the day of conducting the special elections shall be excluded.
Sec. 3. Form of Application; Declaration; Physician's Statement as to Disability.—Application for an absent voter's ballot shall be made in person or by mail, on a blank to be furnished by the clerk of any circuit court of the state. Such blank shall, upon request, be sent to the applicant by mail by any such clerk, or delivered to such applicant in person upon his appearance at the office of any such clerk. Application for an absent voter's ballot shall be substantially in the following form, and shall be signed by the applicant, as hereinafter provided. Such completed application may be returned only to the clerk of the circuit court of the county in which the applicant is a qualified elector.

APPLICATION FOR ABSENT VOTER'S BALLOT

State of ................................, County of ................................, to wit:

I, ................................................, hereby declare that I am now, or will have been, a resident of the State of West Virginia for twelve months, and of the county of ................................ for sixty days, next preceding the date of the ensuing election to be held on the ...................................... day of ........................................, 19........;

that I am now a resident of election precinct No........................, in the magisterial district of ........................................, in said county, that I am a duly qualified voter entitled to vote in such election; that I am registered in the precinct of my residence as provided by law; that (as the case may be) I am................................. (stating business), and because of the nature of my business or employment, or for the following reasons ........................................

(relating unavoidable cause of absence), I expect to be absent from the said county on the date of such election, or I am a (college or university student, member of armed forces, spouse, etc., as specified in section one of this article) and will be unable to vote in person at such election, or because of physical disability, illness or injury (here state reason, whether physical disability, illness or injury) I will be unable to vote in person at such election, as evidenced below by the statement of a duly licensed physician; and I hereby make application for an official ballot (or ballots if more than one are to be used) to be voted by me at such election; and that I will return such
ballot (or ballots) to the officer issuing them not later than four days prior to the day of such election.

(If application is made for a primary ballot, the applicant shall also designate the party whose candidates he expects to vote for:)

I hereby declare under penalty of false swearing, as provided in section three, article nine, chapter three of the code of West Virginia, as amended, that the statements and declarations contained in this application are true and correct to the best of my knowledge and belief.

Signed_____________________.

Home address of applicant _____________________________.

P. O. address to which ballot is to be sent _____________________.

The following statement must be executed if the reason stated is physical disability of the voter:

**STATEMENT OF PHYSICIAN**

I, ____________________________, a physician duly licensed to practice in the State of ____________, do hereby certify under penalty of false swearing, as provided in section three, article nine, chapter three of the code of West Virginia, as amended, that I have examined __________________________, the applicant whose signature appears above, and that in my opinion, because of physical disability, illness or injury ___________________________ (here state reason, whether physical disability, illness or injury), he will be unable to vote in person at such election.

Signed _______________________.

**Sec. 4. Clerk’s Duties and Records on Absentee’s Application and Ballots.**—Upon receipt of an absent voter’s ballot application, the clerk of the circuit court of the county in which the applicant is a qualified elector shall file same in his office and enter the name of the voter applicant, his home address, the address to which the ballot is to be mailed, and the date of receipt of the application on a record to be kept for that purpose. As subsequent events with reference thereto occur, the clerk shall enter upon such record the date of his mailing the ballot applied for, the date of his receipt of the returned ballot, and such other pertinent information as he shall consider necessary and advisable.
Sec. 5. Mailing of Ballots; Time.—Between the thirty-
tieth day and the fourth day next prior to the election
in which the absent voter's ballot is to be used, the clerk
of the circuit court of the county in which an applicant
is a qualified voter shall mail, postage prepaid, to each
duly registered applicant who has executed and filed his
application, to the address shown therein, an official ballot
or ballots (if more than one are to be voted at such elec-
tion), except that the clerk shall not, after the fifteenth
day next prior to such election, mail any such ballot to an
applicant whose address is shown to be outside the con-
tinental limits of the United States of America. The
clerk shall, without delay, mail all such absent voter bal-
lots as soon after the thirtieth day next prior to the election
as he shall have in his office properly executed applications
therefor. The applicant may obtain the absent voter ballot
or ballots by applying personally at the office of the clerk
of the circuit court not more than thirty days before such
election and thereafter may vote such ballot or ballots
in the clerk's office during regular business hours on any
day up to and including the Saturday next preceding the
date of the primary or general election or, in the case of
special elections, up to and including the third day next
preceding the day of any such special election. In com-
puting the thirtieth, fifteenth, fourth and third day before
the election day, the day of the election shall be excluded.
Before any ballot is mailed or delivered the clerk shall
affix his official seal and he and the other members of the
board of ballot commissioners shall place their signatures
near the lower left hand corner on the back thereof.

Sec. 6. Absent Voter's Ballot Envelope; Declaration.
—The clerk of the circuit court of the county shall enclose
the ballot or ballots in an envelope, unsealed, to be fur-
nished by such clerk, which envelope shall bear upon the
face thereof the name, official title and postoffice address
of such clerk and upon the other side a printed declaration
in substantially the following form:

State of......................................,
County of................................,,,, to wit:
I, ...............................................,, hereby declare that I am
a resident of precinct No. ______ of the magisterial district
of _________ residing at _________ in the County of ________
and State of West Virginia, and am entitled to vote in
such precinct at the election to be held on _________,
19_____; that (as the case may be) I am ________ (stating business) and because of the nature of my em-
employment, or for the following reasons ________________
(relating unavoidable cause of absence), I expect to be
absent from the county on the date of such election, or
I am a (college or university student, member of armed
forces, spouse, etc., as specified in section one of this
article) and will be unable to vote in person at such
election, or because of physical disability, illness or in-
jury ________________, (here state reason whether physi-
cal disability, illness or injury), I will be unable to vote
in person at such election. I further declare that I have
personally marked the enclosed ballot (or ballots) in
secret, and have enclosed the same in this envelope and
sealed the same without exhibiting it to any other person.

I hereby declare under penalty of false swearing, as
provided in section three, article nine, chapter three of
the code of West Virginia, as amended, that the above
statements and declarations are true and correct to the
best of my knowledge and belief.

Signed __________________________

Sec. 7. Marking and Mailing Ballot by Absent Voter.
—Such absent voter shall make and subscribe to the
declaration provided for in section six of this article, and
such voter shall thereupon, in the presence of no other
person, mark such ballot or ballots, and such ballot or
ballots shall then be folded by such voter so that each
ballot will be separate and so as to conceal the marking,
and shall be inclosed in such envelope, together with any
unused ballot, and the envelope shall be securely sealed.
The envelope shall then be mailed by such voter, postage
prepaid, to the officer issuing the ballot, or, if more con-
venient, it may be delivered in person, or, if the voter
be for any reason disabled, the envelope may be so mail-
ed or delivered by a person selected and designated by
the voter for that purpose. Any such ballot to be valid
shall be received by the clerk of the circuit court of the county in time for him to deliver the same to the election commissioners before the closing of the polls.

Sec. 8. Clerk’s Receipt of and Action on Absent Voters’ Ballots.—Upon receipt of an absent voter’s ballot, the clerk of the circuit court of the county shall forthwith enclose the same, unopened, together with the application made by such absent voter, in a large carrier envelope, which shall be securely sealed and indorsed with the name and official title of such clerk and the words: “This envelope contains an absent voter’s ballot to be voted in precinct No. ______ in ______________ district in ______________ county, and must be opened only at the polls on election day while such polls are open.” The clerk shall insert the name of the district and the number of the precinct in which the absent voter intends to vote and shall thereafter keep the same securely in his office until delivered by him, as provided in section nine of this article.

Sec. 9. Delivery of Absent Voters’ Ballots to Election Officers.—In the event that an absent voter’s ballot shall be received by the clerk of the circuit court prior to the delivery of the official ballots to the election commissioner of the precinct in which such absent voter resides, such ballot and application, sealed in the carrier envelope, as provided in section eight of this article, shall be delivered to the election commissioner of such precinct along with such official ballots, but, if received after the delivery of such official ballots, the same shall be delivered to the election commissioners of such precinct, by the clerk in person, or by messenger, before the closing of the polls, provided such ballots are received by the clerk in time to make such delivery.

Sec. 10. Return of Absent Voter and Ballot to Precinct.—This article shall not be so construed as to prohibit any absent voter, returning to his place of residence, from voting in person at the proper precinct at any election contemplated in this article, notwithstanding that he may have made application for an absent voter’s ballot or ballots, and such ballot or ballots may have been mailed or
otherwise delivered by the proper clerk to him, (a) if such voter has not availed himself of the privileges of an absent voter, as provided in this article, and voted the ballot or ballots mailed or otherwise delivered by such clerk to him, and (b) if such voter shall return such ballot or ballots, if received, to the commissioners of the election of the precinct of his residence, by whom such ballot or ballots shall be marked “Cancelled,” a minute of such action entered in the poll books, and such ballot or ballots shall thereafter be destroyed with the unused ballots.

Sec. 11. Action When Absent Voter Dies.—Whenever it shall be made to appear by due proof to the election commissioners that any voter, who has marked and forwarded his ballot as hereinbefore provided in this article, has died, then the ballot of such deceased voter shall be returned by the commissioners with defective ballots, but the casting of an absent voter’s ballot of a deceased voter shall not invalidate the election.

Sec. 12. Preparation, Number and Handling of Absent Voters’ Ballots.—Absent voters’ ballots shall be in all respects like other ballots. Not less than thirty days prior to the date on which any primary, general or special election is to be held, the clerk of the circuit courts of the several counties shall estimate and determine the number of absent voters’ ballots of all kinds which will be required in their respective counties for any such election. The ballots for the election of all officers, or the ratification, acceptance or rejection of any measure, proposition or other public question to be voted on by the voters, shall be prepared and printed under the direction of the board of ballot commissioners constituted as provided in article one of this chapter. The several county boards of ballot commissioners shall prepare and have printed, in such number as they shall determine, such absent voters’ ballots as are to be printed under their directions as hereinbefore provided, and such ballots shall be delivered to the clerk of the circuit court of the county not less than thirty days prior to the day of the election at which they are to be used.
Sec. 13. Clerk’s Additional Duties and Responsibilities;

Assistance to Voters Unable to Write.—The clerk of the circuit court shall be primarily responsible for the preparation, mailing, receiving, delivering and otherwise handling of all absent voter ballots. He shall keep a record of all ballots so delivered for the purpose of absentee voting, as well as all ballots, if any, marked before him, and shall deliver to the commissioner of election to whom the ballots for the precinct are delivered and at the time of the delivery of such ballots a certificate stating the number of ballots delivered or mailed to absent voters, and those marked before him, if any, and the names of the voters to whom such ballots have been delivered or mailed, or by whom they have been marked, if marked before him.

In the event a voter, qualified to vote an absent voter’s ballot as herein prescribed, offers to vote such ballot or ballots in the clerk’s office but manifests inability to write or mark his ballot, the voter may designate and call upon any person of his choice then present to assist him in voting his absent voter’s ballot or ballots thereat and such designated person shall thereupon assist such voter in the manner and to the extent of poll clerk assistance to voters at the polling places under provisions of section thirty-four of article one of this chapter.

Sec. 14. Challenges of Votes of Absent Voters.—The vote of an absent voter may be challenged for any cause for which it could be challenged if the voter were present and voting in person. When any such challenge is made, the procedure relating to challenges at the polls, as provided in article one of this chapter, shall apply. Notice of such challenge shall be sent by the clerk of the county court to the absent voter by registered or certified mail with return receipt requested.

Sec. 15. Canvass of Absent Voter Ballots; Requirements; Procedure.—At any time between the opening and closing of the polls on such election day, the commissioners of election of the precinct, in the presence of each other, shall open the absent voter ballot outer or carrier envelope only, announce the absent voter’s name and compare the signature upon the application with the sig-
nature at the end of the declaration on the ballot envelope and upon the voter's registration record. In case the election commissioners find the declaration properly executed, that the signatures correspond, that the applicant is a duly qualified voter of the precinct indicated, that he is duly registered, and that the applicant has not voted in person at such election, or, in case of a primary election, if he has not previously exercised the right of suffrage, if he shall have executed the proper statement relative to his age and qualifications and the party with which he intends to affiliate, the election commissioners shall open the envelope containing the absent voter's ballot in such manner as not to deface or destroy the declaration thereon, and take out the ballot or ballots inclosed therein, without unfolding or permitting the same to be unfolded or examined. The election commissioners shall then deliver such ballot or ballots to the poll clerks who shall at once proceed to write their names on the back of each of such ballots in the same manner as other ballots are required to be endorsed by the poll clerks at precinct voting. A commissioner shall thereupon deposit the same in the ballot box and the poll clerks shall indicate, in the appropriate place on the registration record in the same manner as if he had appeared personally, the fact that such absent voter had voted, and shall enter the absent voter's name on the poll book. In the event that such declaration is found to be insufficient, or that the signatures do not correspond, or that the applicant is not a duly qualified voter in such precinct, or that he has voted in person at such election, or that he has not registered, or that the ballot is open, or has been opened and resealed, or that the ballot envelope contains more than one ballot of any one kind, or, in case of a primary election, if he shall have failed to execute the proper statements relative to his age and qualifications and the party with which he intends to affiliate, such vote may be challenged as provided in the next preceding section of this article.

Sec. 16. Absentee Voting in Municipal Elections.—The provisions of this article relating to absentee voting shall apply to all municipal elections, except where clearly not adaptable thereto, and the governing bodies of the several
5 municipalities of the state shall by ordinance implement
6 the provisions hereof so as to develop and provide a
7 complete and satisfactory absentee voting system for mu-
8 nicipal elections.

Article 4. Voting Machines.

Section 1. Use of voting machines authorized.
2 Procedures for adopting voting machines.
3 Procedures for terminating use of voting machines.
4 Duty of county court to acquire machines; provision in some
5 precincts.
6 Acquisition of machines by purchase or lease.
7 Bids and contracts for voting machines; false swearing or failure
to disclose facts.
8 Voting machine commission; how composed; duties; compensation
and expenses.
9 Minimum requirements of voting machines.
10 County court clerk custodian of machines; duties.
11 Ballot labels, instructions, and other supplies; vacancy changes;
   procedure and requirements.
12 Ballot label arrangement in machines; drawing by lot to determine
   position of candidates for house of delegates on machines;
   adjustment; records.
13 Inspection of machines; duties of county court, ballot commission-
   ers, election commissioners; keys and records relating to ma-
   chines.
14 Election boards where voting machines used; instructions; vacan-
   cies.
14 Instructions and helps to voters; voting machine models; facsimile
   diagrams; sample ballots; legal ballot advertisements.
15 Delivery of machines; time; arrangement for voting.
16 Check of machines before use; corrections; reserve machines.
17 Disrepair of machines in use; reserve machines; counting.
18 Conducting voting machine elections generally; duties of election
   officers.
19 “Independent” voting in primary elections.
20 Recording and disposition of absent voters’ ballots.
21 Assistance to illiterate and disabled voters.
22 Persons prohibited about voting machines; penalties.
23 Voting by challenged voters.
24 Closing polls; counting and reporting returns; duties and pro-
   cedures.
25 Form and delivery of return sheets.
26 Post-election custody and inspection of machines; canvass and
   recounts.
27 Incorrect recordation or tabulation of votes; test of machine ac-
   curacy; procedures and requirements.
28 Adjustments in voting precincts where machines used.
29 Use of voting machines in municipal elections.
30 Applicability of general laws relating to elections.
31 Tampering with voting machines; other dishonest practices; at-
   tempts; penalty.
32 Wilful neglect of duty by officials; penalties.

Section 1. Use of Voting Machines Authorized.—Voting
2 machines may be used for the purpose of registering or
3 recording and computing votes cast in general, special
4 and primary elections, provided that the use thereof shall
be governed by the terms, conditions, restrictions and limitations imposed by this article.

Sec. 2. Procedures for Adopting Voting Machines.—
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 question of adoption of voting machines as hereinafter provided, such county court shall enter a final order adopting voting machines, and voting machines shall thereby be adopted.

If five per cent or more of the registered voters of such county shall sign a petition requesting that voting machines be not adopted for use in such county and such petition be filed with the county court of such county within ninety days after the entry of such order of intention to adopt the use of voting machines, such county court shall submit to the voters of such county at the next general or primary election, whichever shall first occur, the question: "Shall voting machines be adopted in .................
County?" If this question be answered in the affirmative by a majority of the voters in such election upon the question, voting machines shall thereby be adopted. If such question shall not be answered in the affirmative by such majority, the use of voting machines shall not be adopted.

(2) By the affirmative vote of a majority of the voters of such county voting upon the question of the adoption of voting machines in such county. If five per cent or more of the registered voters of such county shall sign a petition requesting the adoption of voting machines for use in such county, and such petition be filed with the county court of such county, such county court shall submit to the voters of such county at the next general or primary election, following by not less than ninety days the date of the filing of such petition, the question: "Shall voting machines be adopted in County?" If this question be answered in the affirmative by a majority of the voters of such county voting upon the question, voting machines shall thereby be adopted. If such question shall not be answered in the affirmative by such majority, the use of voting machines shall not be adopted.

Sec. 3. Procedures for Terminating Use of Voting Machines.—If at any time after the adoption of voting machines in any county as herein provided, five per cent or more of the registered voters of such county shall sign a petition requesting that the use of voting machines be terminated, and such petition be filed with the county court of such county, such county court shall submit to the voters of such county at the next general or primary election, following by not less than ninety days the date of the filing of such petition, the question: "Shall the use of voting machines in County be terminated?" If this question be answered in the affirmative by a majority of the voters of such county voting upon the question, the use of voting machines in all future elections shall thereby be terminated; otherwise, the use of voting machines shall be continued.

Any vote pursuant to this section and the preceding section which results in a failure to adopt, or in a termi-
nation of the use of voting machines shall not be con-
strained to preclude any future proceeding by the voters or
the county court of any county to adopt or readopt voting
machines in a lawful manner as provided herein.

Sec. 4. Duty of County Court to Acquire Machines;
Provision in Some Precincts.—If the use of voting ma-
chines shall have been adopted as hereinbefore provided,
it shall be the duty of the county court of such county to
acquire the necessary number of voting machines to sup-
ply each election precinct within such county as soon as
possible, and to acquire such reserve machine or machines
as will be deemed necessary, and to acquire for each ma-
chine an instruction model.

If it shall be impossible for the county court to supply
each election precinct with a voting machine or voting
machines for use at the next election following the adop-
tion of voting machines, as many voting machines shall
be supplied for that election and the next succeeding
elections as it is possible for the county court to acquire
in the manner as hereinafter provided, and the machines
so acquired may be used in such election precincts within
the county as the county court may direct until it shall
be possible to provide the requisite number of voting
machines properly to equip all precincts within the
county.

Sec. 5. Acquisition of Machines by Purchase or Lease.
—The county court may finance the acquisition of voting
machines by any one or any combination of the following
methods:

(1) By purchasing the same and paying the purchase
price therefor in cash from funds available from the maxi-
mum general levy or from any other lawful source; and

(2) By leasing the same under written contract of lease,
and paying the rentals therefor in cash from funds avail-
able from the maximum general levy or any other lawful
source.

Sec. 6. Bids and Contracts for Voting Machines; False
Swearing or Failure to Disclose Facts.—Contracts for the
purchase or lease of voting machines shall be based on
competitive bids. The county court shall solicit sealed bids:
by sending requests by mail to all known manufacturers
and suppliers of voting machines which have been previ-
ously approved by the voting machine commission as
hereinafter provided. The award of contracts of purchase
or lease shall be based on the quality, cost, specifications
and suitability of the particular voting machines.

No bid shall be accepted by the county court unless
accompanied by a contract which shall provide that in
the event the bid is accepted the party or parties making
the sale or lease shall:

(1) Guarantee in writing to keep the machine or ma-
hines in good working order for five years without addi-
tional cost to the county court.

(2) Warrant to defend and indemnify the county court
against any claim for patent infringement, and in case any
machine or machines shall be held to be an infringement
of a valid patent, to obtain a license for the use of such
patent on the machines sold or leased to the county court
or to modify the machines so that the offending infringe-
ment is removed without altering the mechanical efficiency
or statutory requirements of the machines; all at the
sole cost and expense of the supplier of the voting
machines.

(3) Provide a bond with good corporate surety duly
qualified to do business in West Virginia, conditioned upon
the due performance of said guaranty and said warranty,
in a penal sum to be fixed by the county court.

No bid shall be accepted by the county court unless the
party or parties submitting the bid shall file with the bid
an affidavit:

(1) Disclosing the name and address of, and the amount
of any contribution paid or to be paid to, any individual,
partnership, corporation or association hired regularly
and specially for the purpose, or partly for the pur-
pose, of attempting to influence directly or indirectly the
purchase or lease of the voting machine represented by
the bid.

(2) Declaring that no individual, partnership, corpora-
tion or association not disclosed in said affidavit shall
thereafter be regularly or specially hired and no contribution shall thereafter be paid for the purpose or partly for the purpose of attempting to influence directly or indirectly the purchase or lease of the voting machine represented by the bid.

For the purpose of this affidavit, the word “contribution” shall mean payment, distribution, loan, advance, deposit, gift of money, property, benefit or other consideration, or any agreement providing for a payment, distribution, loan, advance, deposit, or gift of money, property, benefit, or other consideration at any future time.

Any person who shall knowingly or wilfully make any false or fraudulent statement, or who shall knowingly or wilfully fail to disclose any material fact in the affidavit required by this section shall be guilty of a felony, and, upon conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars or imprisonment in the state penitentiary for not less than one year nor more than three years, or both, in the discretion of the court.

In construing this section, the term “person” shall include an individual, partnership, committee, association, and any other organization or group of persons.

Sec. 7. Voting Machine Commission; How Composed; Duties; Compensation and Expenses.—There is hereby created a voting machine commission, to be composed of the secretary of state, and two persons appointed by the governor, by and with the advice and consent of the senate, who shall be mechanical experts and not members of the same political party. The term of office of such commissioners shall be four years, except that the commissioners appointed by the governor shall be subject to removal at his pleasure, and that any secretary of state, in surrendering the duties of his office, shall be succeeded on the commission by the succeeding secretary of state. No member of the commission shall have any interest in any voting machine.

Any person or corporation owning or being interested in any voting machine may apply to said commission to
the end that such machine may be examined and a report
be made on its accuracy, efficiency, capacity, and safety.
The mechanical experts of the commission shall examine
the machine and make full report thereon to the secretary
of state. They shall state in the report whether or not the
machine so examined complies with the requirements of
this article and can be safely used by voters at elections
under the conditions prescribed in this article. If the
report be in the affirmative upon said question, the ma-
chine shall be deemed approved by the commission and
the machine of its make and design may be adopted for
use at elections as herein provided. Any form of voting
machine not so approved shall not be used at any election.
Each of the two mechanical experts on the commission
shall be entitled to two hundred dollars for his compen-
sation and expenses in making such examination and
report, and such compensation shall be paid by the person
or corporation applying for such examination, which sum
shall be paid in advance of making the examination and
which sum shall be the sole compensation to be received
by any such expert for his work hereunder.

Sec. 8. Minimum Requirements of Voting Machines.—
A voting machine of particular make and design shall not
be approved by the voting machine commission or be
purchased, leased, or used, by any county court unless it
shall fulfill the following requirements:

(1) It shall secure or insure the voter absolute secrecy
in the act of voting, or, at the voter's election, shall provide
for open voting;

(2) It shall be so constructed that no person except in
instances of open voting, as herein provided for, can see or
know for whom any voter has voted or is voting, and that
no voter or other person can, while the machine is un-
locked for operation, see or otherwise ascertain the nu-
merical total of votes cast for any candidate or for or
against any question;

(3) It shall permit each voter to vote at any election
for all persons and offices for whom and which he is law-
fully entitled to vote, whether or not the name of any such
person appears on a ballot label as a candidate; and it shall
permit each voter to vote for as many persons for an office
as he is lawfully entitled to vote for; and to vote for or
against any question upon which he is lawfully entitled
to vote;

(4) It shall preclude each voter from voting for any
person or office or upon any question for whom or which
and upon which he is not lawfully entitled to vote and
from voting for more persons for any office than he is law-
fully entitled to vote for, and from voting for any can-
didate for the same office and upon any question more than
once;

(5) It shall permit each voter to deposit, write in, or
affix upon devices to be provided for that purpose, ballots
containing the names of persons for whom he desires to
vote whose names do not appear upon the machine ballot
labels;

(6) It shall permit each voter to change his vote for any
candidate and upon any question appearing upon the bal-
lot labels up to the time when he starts to register his vote;

(7) It shall correctly register and accurately count all
votes cast for each candidate and for and against each
question appearing upon the ballot labels;

(8) It shall permit each voter at any election other than
primary elections, to vote a straight party ticket by one
device, and by one device to vote for all candidates of one
party for presidential electors; and to vote a mixed ticket
selected from the candidates of any and all parties and
from independent candidates;

(9) It shall be capable of adjustment by election officers
at a primary election so as to permit each voter to vote
only for the candidates of the party with which he has
declared his affiliation, and so as to preclude him from
voting for any candidate seeking nomination by any other
political party, and so as to permit each voter to vote for the
candidates, if any, for nonpartisan nomination or election
and on public questions;

(10) It shall have separate voting devices for candi-
dates and questions, which shall be arranged in separate
rows or columns. It shall also be arranged so that one
or more adjacent rows or columns may be assigned to the
candidates of each political party at primary elections;

(11) It shall have a public counter or other device, the
register of which is visible on the outside of the machine
and which shall show the total number of voters who have
voted on that machine in the election; also candidate and
question counters or other devices which shall not be
visible on the outside of the machine when the machine
is unlocked for operation, and upon which are registered
numerically the total votes cast for each candidate and
question appearing on the ballot labels; also a protective
counter or other device which will record the cumulative
total number of movements of the registering mechanism;

(12) It shall be provided with locks and seals by the
use of which all movement of the registering mechanism
is prevented, both before the polls are open or before the
operation of the machine for an election is begun and
immediately after the polls are closed or after the opera-
tion of the machine for an election is completed;

(13) It shall have the capacity to contain the names
of candidates constituting the tickets of at least nine po-
litical parties, and to accommodate the wording of at least
fifteen questions;

(14) It shall be durably constructed of material of good
quality and in a workmanlike manner and in a form which
shall make it safely transportable;

(15) It shall be so constructed with frames for the
placing of ballot labels and with transparent devices for
the protection of such labels, that the labels on which are
printed the names of candidates and their respective par-
ties, titles of offices, and wording of questions shall be rea-
sonably protected from mutilation, disfigurement or dis-
arrangement;

(16) It shall bear a number that will identify it or dis-
tinguish it from any other machine;

(17) It shall be so constructed that a voter may easily
learn the method of operating it and may expeditiously
cast his vote for all candidates of his choice; and

(18) It shall be accompanied by a mechanically oper-
ated instruction model which shall show the arrangement of ballot labels, party columns or rows, and questions.

Sec. 9. County Court Clerk Custodian of Machines; Duties.—When voting machines are acquired by any county court, they shall be immediately placed in the custody of the county clerk, and shall remain in his custody at all times except when in use at an election or when in custody of a court or court officers during contest proceedings. The clerk shall see that the machines are properly protected and preserved from damage or unnecessary deterioration, and shall not permit any unauthorized person to tamper with them. The clerk shall also be charged with the duty of keeping the machines in repair and of preparing the same for voting.

Sec. 10. Ballot Labels, Instructions, and Other Supplies; Vacancy Changes; Procedure and Requirements.—The ballot commissioners of any county in which voting machines are to be used in any election shall cause to be printed for use in such election the ballot labels for the voting machines. The ballot labels so printed shall total in number one and one-half times the total number of voting machines to be used in the several precincts of the county in such election. All such labels shall be delivered to the clerk of the county court at least fifty days prior to the day of the election in which such labels are to be used. The labels shall contain the name of each candidate and each question to be voted upon and shall be clearly printed or typed in black ink on clear white material of such size as will fit the ballot frames. One set of ballot labels shall be inserted in the machine prior to the delivery of the machine to the polling place. The remainder of such ballot labels for each machine shall be retained by the clerk of the county court for use in the event the set so inserted in a machine becomes lost, mutilated or damaged.

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 com-
mittee for the political division to provide, or cause to be
provided, and deliver, or cause to be delivered, to the
clerk, a sufficient number of ballot labels containing
the name of such candidate. Such ballot labels shall con-
form to the specifications as set forth herein. 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 consent of the ballot commis-
sioners, shall cause such ballot labels to be inserted in the
proper ballot frames.

In addition to all other equipment and supplies required
by the provisions of this article, the ballot commissioners
shall cause to be printed a supply of instruction cards,
sample ballots, facsimile diagrams of the voting machine
ballot and official printed ballots adequate for the orderly
conduct of the election in each precinct in their county.
In addition they shall provide all other materials and
equipment necessary to the conduct of the election, in-
cluding appropriate facilities for the reception and safe-
keeping of the ballots of absent voters and of challenged
voters and of such “independent” voters who shall, in
primary elections, cast their votes on nonpartisan candi-
dates and public questions submitted to the voters.

Sec. 11. Ballot Label Arrangement in Machines; Draw-
ing by Lot to Determine Position of Candidates for House
of Delegates on Machines; Adjustment; Records.—When
the ballot labels are printed and delivered to the clerk of
the county court, he 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 of each candidate. Each column or row contain-
ing the names of the office and candidates for such office
shall be so arranged as to clearly indicate the office for
which the candidate is running. The names of the candi-
dates for each office indicated shall be placed on the
ballot.
The clerk of the circuit court shall appoint a time at
which all candidates for the house of delegates are to
appear in his office for the purpose of drawing by lot
to determine where their names will appear on the voting machines. The clerk shall give due notice of such time to each such candidate by registered or certified mail, return receipt requested. At the time appointed, all such candidates for the house of delegates shall assemble in the office of such clerk and such candidates shall then proceed to draw by lot to determine where their names shall appear on the voting machines. The number so drawn by each such candidate shall determine where his or her name shall appear on the voting machines. In the event any candidate or candidates fail to appear at the time appointed, the clerk shall draw for such absent candidate or candidates in the presence of those candidates assembled, if any, and the number so drawn by the clerk shall determine where the name of any absent candidate or candidates shall appear on the voting machines.

The clerk shall then see that the counters referred to in subsection eleven of section eight 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 or machines to be used in that precinct.

Sec. 12. Inspection of Machines; Duties of County Court, Ballot Commissioners, Election Commissioners; Keys and Records Relating to Machines.—When the clerk of the county court has completed the preparation of the voting machines, as provided in the next preceding section, and not later than seven days before the day of the election, he shall notify the members of the county court and the ballot commissioners that the machines are ready for use. Thereupon the members of the county court and the ballot commissioners shall convene at the office of the clerk, or at such other place wherein the voting machines are stored, not later than five days before the day of the election, and shall examine the machines to determine whether the requirements of this article have been met. Any candidate, and one representative of each
political party having candidates to be voted on at the election, may be present during such examination. If the machines are found to be in proper order, the members of the county court and the ballot commissioners shall endorse their approval in the book in which the clerk entered the numbers of the machines opposite the numbers of the precincts. The clerk shall then deliver the keys to the voting machines to the ballot commissioners who shall give a receipt for the keys, which receipt shall contain identification of such keys. Not later than three days before the election the election commissioner of each precinct who shall have been previously designated by the ballot commissioners, shall attend at the office of the clerks of the circuit and county courts of such county to receive the key or keys to the device covering the registering counters and such other keys as may be necessary for the operation of the machine in registering votes, and to receive the other necessary election records, books, and supplies required by law. Such election commissioners shall receive the per diem mileage rate prescribed by law for this service. Such election commissioners shall give the ballot commissioners a receipt for such keys, records, books and supplies, and such receipt shall contain identification of such keys. The master key and all other keys shall remain in the possession of the clerk of the county court.

Sec. 13. Election Boards Where Voting Machines Used; Instructions; Vacancies.—The county court shall appoint a uniform election board, consisting of three election commissioners and two poll clerks, to conduct each election in each precinct of each county in which voting machines have been adopted and are to be used.

The county court shall call the necessary meeting or meetings for the instruction of all election officials in the use of the voting machines. Such meeting or meetings shall be held and the proper instructions 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. If such defaulting officer were
appointed by the county court upon the written recom-
mandation of a county executive committee as provided
in article one 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.

Where not inconsistent with the provisions of this sec-
tion, provisions of article one of this chapter, relating to
the appointment of election officers, shall be applicable
herein.

Sec. 14. Instructions and Helps to Voters; Voting Ma-
achine Models; Facsimile Diagrams; Sample Ballots; Legal
Ballot Advertisements.—For the instruction of the voters
on any election day there shall be provided for each pol-
ing 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 ma-
chine, 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 loca-
tion of the parties, offices, candidates and questions as
they appear on the voting machine to be used in his pre-
cinct. Ballot labels may be affixed to the diagrams to in-
sure that the position of the names of the candidates in
each office division shall appear accurately on the dia-
grams of each precinct.

The ballot commissioners may, with the consent of the
county court, or the county court may prepare and mail
to each qualified voter at his address as shown on the
registration books a facsimile sample of the ballot for his
precinct.

In counties where voting machines have been adopted,
the legal ballot advertisements required by articles five
and six of this chapter, shall consist of a facsimile of the
face of the voting machine with the names of the candi-
dates and the offices for which they are running shown in
their proper positions.

Sec. 15. Delivery of Machines; Time; Arrangement for
Voting.—The clerk of the county court 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 cov-
ering 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. Check of Machines Before Use; Corrections;
Reserve Machines.—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 eight of
this article were set at zero (000) and to ascertain whether
the ballot labels are arranged as specified on the facsimile
diagram furnished to the precinct. If the machine indi-
cates that it has been operated or if the ballot labels are
arranged incorrectly, the officers shall not unlock the oper-
ating 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 bal-
lot labels, as the case may be, in the presence of the elec-
tion 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 clerk of the
county court of the foregoing facts and obtain from such
clerk a reserve voting machine, and thereafter proceed
to conduct the election. Any reserve machine so used
shall be prepared for use by the 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 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. Disrepair of Machines in Use; Reserve Ma-
chines; Counting.—If, during the conduct of an election,
a machine becomes in a state of disrepair so that it can-
not 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 shown by
the public counter. Then the election officers shall se-
cure from the county clerk a reserve voting machine,
which shall be prepared for use, delivered and examined
in the same manner as hereinbefore provided, and shall
thereafter proceed to conduct the election. When the
polls are closed, both the original and reserve voting ma-
chines shall be examined and the votes thereon registered
shall be counted as provided in section twenty-three of
this article and the aggregate number of votes cast on
both machines for each candidate and on each question
shall be certified as the result of the election in that pre-
cinct.

Sec. 18. Conducting Voting Machine Elections Gener-
ally; Duties of Election Officers.—(1) The election officers shall constantly and diligently maintain a watch in order to see that no person votes more than once and to prevent any voter from occupying the voting machine for more than three minutes.

(2) In primary elections before a voter is permitted to use the voting machine, the election officer representing the party to which the voter belongs shall adjust the machine so that the voter will be able to vote only for the candidates who are seeking nomination on the ticket of the party with which the voter is affiliated.

(3) If the machine is so constructed as to require adjustment after one person has voted before another person can vote, the election officers shall so adjust it after each person has voted.

(4) The election officers shall issue to each voter when he signs the poll book a card or ticket numbered to correspond to the number on the poll book of such voter, and in the case of a primary election, indicating the party affiliation of such voter, which numbered card or ticket shall be presented to the election officer in charge of the voting machine.

Sec. 19. “Independent” Voting in Primary Elections.—If at any primary elections nonpartisan candidates for office and public questions are submitted to the voters and on which candidates and questions persons registered as “independent” are entitled to vote, as provided in section eighteen of article two of this chapter, the election officers shall adjust the voting machines, if mechanically possible to do so, so that such “independent” voters may vote only those portions of the voting machine ballot relating to the nonpartisan candidates and the public questions submitted.

If the voting machines cannot be so adjusted for the “independent” voters, then such “independent” voters, under the close supervision of two commissioners of the election of different political party affiliation, shall be permitted to use the voting machines for voting only those parts of the ballot relating to such nonpartisan candidates and public questions so submitted to the voters.
In lieu of using the voting machines, such “independent” voters may request official printed ballots relating to such nonpartisan candidates and public questions. Such ballots, when signed on the back by the poll clerks as in other elections, shall be voted and folded by the “independent” voter and shall be delivered to one of the election commissioners who shall secure same in a sealed or locked container until canvassed and counted in the same manner as provided for handling and recording absent voter ballots as provided in the section next hereafter.

Sec. 20. Recording and Disposition of Absent Voters’ Ballots.—When absent voters’ ballots have been voted and delivered to the election board of any precinct, the election commissioners shall as time permits proceed to determine the legality of such ballots as prescribed in article six of this chapter, and shall prior to the close of the polls, before sealing the operating lever and before unlocking the counter compartment, vote or record such votes on the voting machine. Such recording of absent voters’ ballots shall be done by one of the election commissioners and the act of casting such votes shall be performed in the presence, and under the careful observation and full view, of all members of the precinct election board, and the votes as indicated by the voting pointers shall not be registered until each member of such board is satisfied that the arrangement of such voting pointers fully carries out the intent of the voter as shown by the cross marks on the paper ballot.

After completion of the count, absentee ballots shall be enclosed in a sealed package, properly endorsed, and returned and filed with the statement of returns.

Sec. 21. Assistance to Illiterate and Disabled Voters.—Any duly registered voter, who shall have indicated on his registration record that he is unable, because of illiteracy or physical disability, to write or whose physical disability, in the opinion of the election officers, prevents him from operation of the voting machine, may ask for assistance from two election officers of opposite political party affiliation to whom he shall thereupon declare his
choice of candidates and his position on public questions appearing on the ballot labels. Such election officers, in the presence of the voter and in the presence of each other, shall thereupon cause such voter's declared choices to be registered by the voting machine as votes.

Sec. 22. Persons Prohibited about Voting Machines; Penalties.—Excepting the election officials acting under authority of sections eighteen, nineteen, twenty and twenty-one of this article in the conduct of the election, no person other than the voter alone may be in, about or within five feet of the voting machine during the time such voter is in the process of voting at any election, and, during such time, no person may communicate in any manner with the voter and the voter may not communicate with any other person or persons. Any conduct or action of an election official about or around the voting machine while the voter is in the process of voting, in excess of the authority vested in such official by provisions of this article, shall constitute a violation of the provisions hereof. Any person violating any provision or provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not exceeding one thousand dollars or be sentenced to imprisonment in the county jail for a period not exceeding twelve months, or, in the discretion of the court, shall be subject to both such fine and imprisonment.

Sec. 23. Voting by Challenged Voters.—If the right of any person to vote be challenged in accordance with provisions of article one of this chapter relating to the challenging of voters, such person shall not be permitted to cast his vote by use of the voting machine but he shall be supplied by the election officer at the polling place with an official printed ballot of such election. Such ballot shall not be indorsed on the back by the poll clerks but, when voted by the challenged voter, shall have affixed thereto by the poll clerks their statement of information as to the challenge on the form prescribed therefor. Such challenged ballots shall be secured, handled and disposed of as challenged ballots in other elections, as provided in article one of this chapter.
Sec. 24. Closing Polls; Counting and Reporting Returns; Duties and Procedures.—(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, if any, 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 election officers. The total vote cast for each can-
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 machine shall remain exposed to view until the returns and all other reports have been fully completed.

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 officer 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 such county and one to the secretary of state at Charleston, West Virginia, and the general return sheet and statement shall be directed and immediately delivered to the clerk of the
county court of such county. The envelope shall have endorsed thereon a certificate of the election officers, stating the number of the machine, the precinct where it has been used, the number of the seal, and the number registered on the protective counter at the close of the polls.

(5) As soon as possible after the completion of the count, the election officers shall return to the county court and the ballot commissioners the keys to the voting machine received and receipted for by them, and the clerk of the county court shall have the voting machine properly boxed or securely covered and removed from the polling place to a proper and secure place of storage.

Sec. 25. Form and Delivery of Return Sheets.—The general return sheet, triplicate return sheets, and statement, shall be printed to conform with the make of voting machine used. The designating number and letter, if any, on the counter for each candidate shall be reprinted thereon opposite the candidate’s name. Immediately after the vote has been ascertained, the above mentioned return sheets shall be forthwith delivered to the respective persons to whom they are addressed as provided in this chapter.

Sec. 26. Post-Election Custody and Inspection of Machines; Canvass and Recounts.—(1) The voting machines shall remain locked against voting during the canvass of the returns of the election and for a period of seven days after the canvass is finally concluded, during which time any candidate or the chairman of any county executive committee of any political party or their appointed representatives, shall be permitted to examine the voting machines under the supervision of the county court for the purpose of determining the number of votes cast for any candidate or for and against any question. After the expiration of the seven-day period as herein provided, the voting machines may be unlocked by the clerk of the county court and the registering counters reset at zero (000) unless the board of canvassers or a court of competent jurisdiction by appropriate court order directs otherwise.
(2) During the period when such machine is required
to be kept locked, the keys thereto shall remain in the
possession of the county court. After such period, it shall
be the duty of the county court to return such keys to the
clerk of the county court.

(3) In canvassing the returns of the election, the board of
canvassers shall examine all of the voting machines used
in such election and shall determine the number of votes
cast for each candidate and for and against each ques-
tion and by such examination shall procure the correct
returns and ascertain the true results of the election. Any
candidate or his party representative may be present at
such examination.

(4) If any candidate shall demand a recount of the
votes cast at an election, the voting machines shall not be
reexamined during such recount for the purpose of re-
ascertaining the total number of votes registered on the
voting machines for any candidate.

Sec. 27. Incorrect Recordation or Tabulation of Votes;
Test of Machine Accuracy; Procedures and Requirements.
(1) When during a canvass or a recount of votes cast in
an election it appears to the board of canvassers or if it is
so alleged in a petition for a recount, that a voting ma-
chine used in any precinct has by reason of mechanical
failure or improper or fraudulent preparation or tamper-
ing incorrectly recorded and tabulated the actual votes
cast on such machine, the board of canvassers shall pro-
cceed to determine the error, if any, in the vote registered
on such voting machine. If an error is found, the board of
canvassers shall correct the election returns from such
precinct so as to accurately reflect the votes cast in such
precinct at such election if it is possible to accurately
correct such error. If the board of canvassers is unable to
accurately correct such errors made by said voting ma-
chine and therefore cannot correct the returns from such
precinct to accurately reflect the actual votes cast at such
election, the total votes registered on such voting machine,
despite the fact that such vote may be erroneous, shall be
accepted in the canvass and in the recount as the votes
cast in such precinct.
(2) If it is necessary for the board of canvassers to test any voting machine for its mechanical accuracy in recording and tabulating the votes cast at such election, such test shall be conducted by the clerk of the county court in the presence of the board of canvassers and of any candidate or his party representative. The registering counter shall be reset at zero (000) before it is tested and then the machine shall be operated at least one hundred times. After the completion of such test the clerk will then and there prepare and file a statement in writing giving in detail the result of the examination and test.

Sec. 28. Adjustments in Voting Precincts Where Machines Used.—The provisions of section five of article one of this chapter, relating to the number of registered voters in each precinct, shall not apply to and control in precincts in counties in which voting machines have been adopted and the county courts of such county, subject to other provisions of this chapter with respect to the altering or changing of the boundaries of voting precincts, may change the boundaries of precincts or consolidate precincts, as practicable, to achieve the maximum advantage from the use of voting machines.

The county court may in the urban centers of any county adopting voting machines designate a voting place without the limits of a precinct, provided such voting place is in a public building, and in an adjoining precinct. In such event more than one precinct may vote in any such public building.

Sec. 29. Use of Voting Machines in Municipal Elections. The county court of any county which has adopted the use of voting machines is hereby authorized to make such machines available to any municipality in, or partly in, such county for use in elections conducted by such municipality, and the use of voting machines by such municipality shall be upon such terms and conditions as may be agreed upon between the county court and the municipality.

Sec. 30. Applicability of General Laws Relating to Elections.—Except as modified by this article, the gen-
eral laws applying to regular, special and primary elections shall apply to elections conducted with the use of voting machines.

If it shall be impracticable for the county court of any county, after the adoption of voting machines by such county, to supply the necessary voting machines to each precinct of such county for use in any election, the holding of any election in such precincts, which have not been supplied with voting machines, shall be governed by the general laws with respect to conducting a regular, special and primary election by the use of printed ballots.

Sec. 31. Tampering with Voting Machines; Other Dishonest Practices; Attempts; Penalty.—Any person not an election officer or other public official who shall tamper or attempt to tamper with such voting machines, or in any way intentionally impair or attempt to impair, its use, and any such person who shall be guilty of or shall attempt any dishonest practice upon any such voting machine, or with or by its use, shall be deemed guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary for not less than one year nor more than ten years.

Any clerk of a county court, county commissioner, ballot commissioner, election commissioner, or poll clerk, or any custodian, technician, or other public official authorized to take part in the holding of an election or in preparing for an election, who, with intent to cause or permit any voting machine to fail to register correctly all votes cast thereon, tampers with or disarranges such machine in any way, or any part or appliance thereof, or who causes or consents to the use of said machine for voting at any election with knowledge of the fact that the same is not in order, or not perfectly set and adjusted so that it will correctly register all votes cast thereon, or who, with the purpose of defrauding or deceiving any voter or of causing it to be doubtful for what ticket or candidate or candidates or proposition any vote is cast, or of causing it to appear on said machine that the votes cast for one ticket, candidate or proposition, were cast for another ticket, candidate or proposition, removes, changes or mutilates any ballot label on said machine or
30 any part thereof, or does any other thing intended to in-
31 terfere with the validity or accuracy of the election, shall
32 be deemed guilty of a felony and upon conviction thereof
33 shall be confined in the penitentiary not less than one
34 year nor more than ten years.

Sec. 32. Wilful Neglect of Duty by Officials; Penalties.—
2 Any public officer or election officer upon whom any duty
3 is imposed by this article who shall wilfully omit or
4 neglect to perform such duty, or who shall do any act
5 prohibited in this article for which punishment is not
6 otherwise provided herein, shall be guilty of a misde-
7 meanor, and, upon conviction thereof shall be punished by
8 a fine of not less than five hundred dollars nor more than
9 one thousand dollars, or imprisonment in the county jail
10 for not less than sixty days nor more than one year, or
11 both, in the discretion of the court.

Article 5. Primary Elections and Nominating Procedures.

Section
1. Time and place of holding primary elections; hours polls open.
2. Delegates to national conventions; alternates.
3. Presidential preference.
5. Candidates for county board of education.
6. Election of county board of education members at primary elec-
7. Filing announcements of candidacies; requirements.
8. Filing fees and their disposition.
9. Certification and posting of candidacies.
10. Publication and printing of ballots; number.
11. Candidacies not certified; vacancies; stickers.
12. Official and sample ballots; color.
13. Form and contents of ballots.
14. General provisions applicable to primary elections.
15. Ascertaining and certifying primary election results.
16. Return of supplies and certificates.
17. Canvassing and certifying returns; recount procedures.
18. Disposition of certificates of results.
19. Vacancies in nominations; how filled; fees.
20. Election contests and court review.
21. Party conventions to nominate presidential elector candidates;
organization; duties.
22. Other party and group nominations; procedure.
23. Certificate nominations; requirements and control; penalties.
24. Filing of nomination certificates; time.

Section 1. Time and Place of Holding Primary Elec-
2 tions; Hours Polls Open.—Primary elections shall be held
3 at the voting place in each of the voting precincts in the
4 state, for the purposes set forth in this article, on the
second Tuesday in May in the year one thousand nine hundred sixty-four and in each second year thereafter.

At such election the polls shall be opened and closed at the hours provided for opening and closing the polls in a general election.

Sec. 2. Delegates to National Conventions; Alternates.—At the primary election to be held in the year nineteen hundred sixty-four, and in each fourth year thereafter, there shall be elected by the voters of each political party of the state the number of persons to which the party is entitled as delegates-at-large, and by the voters of each political party in each congressional district in the state the number of delegates to which the district is entitled, in the national convention of the party to be next held after the date of such primary. The persons receiving the highest number of votes in the state as delegates-at-large, to the number to which the state is entitled, shall be elected delegates. The persons receiving the highest number of votes as delegates in any congressional district, to the number to which the district is entitled, shall be elected delegates. Each delegate so elected shall then appoint an individual to serve as alternate delegate, and shall by registered letter notify the secretary of state of such appointment within forty days after the primary election.

Sec. 3. Presidential Preference.—In presidential election years, in addition to the candidates required to be nominated at the primary election, the qualified voters of each political party shall have the opportunity of voting for their choice among those aspiring to be the candidates of their respective parties for president of the United States. The names of such aspirants shall be printed on the official election ballot of their respective parties, as provided in section thirteen of this article, upon the filing with the secretary of state of the announcement as provided in section seven of this article, and the ballot shall be marked and the vote shall be counted, canvassed and returned under the same conditions as to names, certificates and other matters, as the
names and certificates of the party aspirants for the party nomination for the office of governor.

Sec. 4. Nomination of Candidates in Primary Elections. — At each primary election, the candidate or candidates of each political party for all offices to be filled at the ensuing general election by the voters of the entire state, of each congressional district, of each state senatorial district, of each judicial circuit of West Virginia, of each county, and of each magisterial district in the state shall be nominated by the voters of the different political parties, except that no presidential elector shall be nominated at a primary election.

In primary elections a plurality of the votes cast shall be sufficient for the nomination of candidates for office. Where only one candidate of a political party for any office in a political division, including party committee men and delegates to national conventions, is to be chosen, the candidate receiving the highest number of votes therefor in the primary election shall be declared the party nominee for such office. Where two or more such candidates are to be chosen in the primary election, the candidates constituting the proper number to be so chosen who shall receive the highest number of votes cast in the political division in which they are candidates shall be declared the party nominees and choices for such office, except that candidates for the office of commissioner of the county court shall be nominated and elected in accordance with the provisions of section twenty-three of article eight of the constitution of this state and that members of county boards of education shall be elected at primary elections in accordance with the provisions of section six of this article. In case of tie votes between candidates for party nominations or elections in primary elections, the choice of the political party shall be determined by lot by the executive committee of the party for the political division in which such persons are candidates.

Sec. 5. Candidates for County Board of Education. — Any person who is eligible to hold office as a member of a county board of education may file a certificate with the clerk of the circuit court of the county, declaring
himself a candidate for election to such office. Such cer-
tificate shall be substantially in the following form: I,

_______, hereby certify that I am a candidate for non-
partisan election to membership on the __________________
County Board of Education, and desire my name printed
on the ballot to be voted at the primary election to be
held on the ______ day of ___________, 19....; that I am a
legally qualified voter of the county of ___________, State
of West Virginia; that the address of my residence in
__________ County is ___________; that I am eligible to
hold the office; and that I am a candidate therefor in
good faith.

__________________________________________

Candidate

Signed and acknowledged before me this ___ day of ___, 19___

__________________________________________

Signature and official title of
certifying officer.

Such announcement shall be signed and acknowledged
by the candidate before some officer qualified to admin-
ister oaths, who shall certify the same.

Such certificate shall be filed with the clerk of the cir-
cuit court not later than the first Saturday of February
next preceding the primary election day, and must be re-
ceived by the clerk before midnight, eastern standard
time, of that day or, if mailed, shall be postmarked be-
fore that hour.

Sec. 6. Election of County Board of Education Members
at Primary Elections.—An election for the purpose of
electing members of the county board of education shall
be held on the same date as the primary elections as now
provided by law, but upon a nonpartisan ballot printed
for the purpose. In such nonpartisan election the per-
son receiving the highest number of votes shall be elected
for a long term, and if more than one is to be elected for
a long term, the one receiving the next highest shall be
elected; and if more than two are to be elected the candi-
date or candidates receiving the next highest votes shall
be declared elected for any short term or terms, as the
case may be, to fill vacancies; but no more than two such
members shall be elected from the same magisterial dis-
trict, and then only when such magisterial district does not have a hold-over member of said board, and if such magisterial district has one hold-over member on said board only one member shall be elected as aforesaid; and if more persons from a magisterial district receive the highest number of votes in said election, then of such persons only the person or persons having the highest vote who do not make the aggregate number of elected members and hold-over members more than two from such magisterial district shall be declared elected, and the remaining members shall be declared from the highest from other magisterial districts; and in no event shall any member be declared elected from the same magis-
terial district wherein reside two already elected or other-
wise qualified members of such board who will continue to hold office after the beginning of the term for which such election was held.

It is declared to be the intent of this statute that any person declared to be elected under the preceding pro-
visions of the section shall take office as a duly elected member or members, even though he, she or they may not have received a majority or plurality of all votes cast at such election.

In case of tie votes for county board of education mem-
er candidates in any primary election, the provisions of section twelve of article six of this chapter shall be in-
voked and shall control in determination of the election.

Sec. 7. Filing Announcements of Candidacies; Require-
ments.—Any person who is eligible to hold an office (in-
cluding that of member of a state or county executive committee) shall file with the secretary of state, if it be an office to be filled by the voters of more than one coun-
ty, or with the clerk of the circuit court, if it be for an office to be filled by the voters of a county or a subdivision less than a county, a certificate declaring himself a can-
didate for the nomination for such office; which certificate shall be in form or effect as follows:

I, .............., hereby certify that I am a candidate for the nomination for the office of ................. to represent the
party, and desire my name printed on the official ballot of said party to be voted at the primary election to be held on the _____ day of ___, 19___; that I am a legally qualified voter of the county of ______, State of West Virginia; that my residence is number ______ of ______ street in the city (or town) of ______ in ______ county in said State; that I am eligible to hold the said office; that I am a member of and affiliated with said political party; that I am a candidate for said office in good faith.

Candidate

Signed and acknowledged before me this _____ day of ___, 19__

__________________________________________
Signature and official title of person before whom signed.

Such announcement shall be signed and acknowledged by the candidate before some officer qualified to administer oaths, who shall certify the same.

No person may be a candidate for nomination for office in any political party unless it be openly known that such person is a bona fide member of such party.

Such certificate shall be filed with the secretary of state or the clerk of the circuit court, as the case may be, not earlier than the first Monday in January next preceding the primary election day, and not later than the first Saturday of February next preceding the primary election day, and must be received before midnight, eastern standard time, of that day or, if mailed, shall be postmarked before that hour.

Sec. 8. Filing Fees and Their Disposition.—Every person who becomes a candidate for nomination for, or election to, office in any primary election, shall, at the time of filing the certificate of announcement as required in this article, pay a filing fee as follows:

(a) A candidate for president of the United States, for vice president of the United States, for United States senator, for member of the United States house of representatives, for governor and for all other state elective offices
shall pay a fee equivalent to one per cent of the annual salary of the office for which the candidate announces;

(b) A candidate for the office of judge of a circuit court and judge of any court of record of limited jurisdiction shall pay a fee equivalent to one per cent of the total annual salary of the office paid from any and all sources for which the candidate announces;

(c) A candidate for member of the house of delegates shall pay a fee of fifteen dollars, and a candidate for state senator shall pay a fee of thirty dollars;

(d) A candidate for sheriff, prosecuting attorney, circuit clerk, county clerk, assessor, member of the county court and member of the county board of education shall pay a fee equivalent to one per cent of the annual salary of the office for which the candidate announces: Provided, however, That the fee in no case shall be less than five dollars. A candidate for any other county office shall pay a fee of five dollars;

(e) A candidate for justice of the peace in districts having a population of five thousand or less shall pay a fee of ten dollars; in districts having a population of more than five thousand and not more than twenty-five thousand, fifteen dollars; and in districts having more than twenty-five thousand population, each candidate shall pay a fee of twenty-five dollars;

(f) A candidate for constable in districts having a population of five thousand or less shall pay a fee of five dollars; in districts having a population of more than five thousand and not more than twenty-five thousand, ten dollars; and in all other districts fifteen dollars;

(g) Delegates to the national convention of any political party shall pay the following filing fees:

A candidate for delegate-at-large shall pay a fee of twenty dollars; and a candidate for delegate from a congressional district shall pay a fee of ten dollars;

(h) Candidates for members of political executive committees and other political committees shall pay the following filing fees:

A candidate for member of a state executive commit-
tee of any political party shall pay a fee of ten dollars; a
candidate for member of a county executive committee
of any political party shall pay a fee of one dollar; and a
candidate for member of a congressional, senatorial or
judicial committee of any political party shall pay a fee
of one dollar.

Candidates filing for an office to be filled by the voters
of one county shall pay the filing fee to the clerk of the
circuit court, and candidates filing for an office to be filled
by the voters of more than one county shall pay the filing
fee to the secretary of state at the time of filing their cer-
tificates of announcement, and no certificate of announce-
ment shall be received until the filing fee is paid.

All moneys received by such clerk from such fees shall
be credited to the general county fund. Moneys received
by the secretary of state from fees paid by candidates for
offices to be filled by all the voters of the state shall be
deposited in a special fund for that purpose and shall be
apportioned and paid by him to the several counties on
the basis of population, and that received from candidates
from a district or judicial circuit of more than one coun-
ty shall be apportioned to the counties comprising the
district or judicial circuit in like manner. When such
moneys are received by sheriffs, it shall be credited to the
general county fund.

Sec. 9. Certification and Posting of Candidacies.—Dur-
ing the week next following the last Saturday of Febru-
ary next preceding the day fixed for the primary elec-
tion, the secretary of state shall arrange the names of all
the candidates, who have filed announcements with him,
as provided in this article, and who are entitled to have
their names printed on any political party ballot, in ac-
cordance with the provisions of this chapter, and shall
forthwith certify the same under his name and the lesser
seal of the state, and file the same in his office.

Such certificate of candidates shall show the name and
residence of each candidate, the office for which he is a
candidate, the name of the political party of which he is
a candidate, and upon what ballot his name is to be
printed. The secretary of state shall post a duplicate of
such certification in a conspicuous place in his office and keep same posted until after the primary election. Immediately upon completion of such certification, the secretary of state shall ascertain therefrom the candidates whose names are to appear on the primary election ballots in the several counties of the state and shall certify to the clerk of the circuit court in each county the certificate information relating to each of the candidates whose names are to appear on the ballot in such county. He shall transmit such certificate to the several clerks by registered or certified mail, but, in emergency cases, he may resort to other reliable and speedy means of transmission which may be available so that such certificates shall reach the several clerks by the sixtieth day next preceding such primary election day.

Sec. 10. Publication and Printing of Ballots; Number.—Between the sixtieth and the thirtieth days next prior to the date of the primary election, the ballot commissioners of each county shall prepare from the lists and certificates of announcements, as provided in this article, a sample official primary ballot for each party, placing thereon the names of all the candidates of the political party, and, as the case may be, the nonpartisan candidates to be voted for at such primary election. During the two weeks next preceding the primary election they shall publish such sample official primary election ballot in two issues of a newspaper of general circulation published in such county and representing such party, if there be one, but, if there be no such newspaper so published, then they shall publish such ballot in two issues of some other newspaper published and of general circulation in such county.

The ballot commissioners shall determine the total number of official ballots required for conducting the primary election in all of the election precincts of the county and shall cause same to be printed at least thirty days next preceding the date of the election and made ready for delivery to the several precincts along with other election supplies. The number of official ballots of a political party prepared for delivery to a precinct shall not exceed one and one-twentieth times the number of registered voters of such party in that precinct.
Sec. 11. Candidacies Not Certified; Vacancies; Stickers.

—If, by satisfactory evidence, it shall appear to the ballot commissioners of any county that announcements have been made in conformity with the provisions of this chapter and no certificate thereof has been received by them, they shall include such persons among the names of candidates to be printed upon the ballots, as in this article provided.

If, after the time is closed for announcing as a candidate for any office, and not later than the fifth day preceding the date of the primary election, any person who has filed an announcement of candidacy shall withdraw and decline to stand as a candidate for the office, or shall die, leaving no primary election candidate for his party’s nomination for such office, the executive committee of the party, for the political division within which such candidate was to be voted for, may, in its discretion, fill the vacancy caused by such withdrawal or death by naming another candidate for such office. The chairman of such executive committee shall forthwith certify the candidate so named for such vacancy to the ballot commissioners of the county or counties concerned and shall immediately send a copy of such certification to the secretary of state. If the ballots have been printed before receipt of such certificate, the ballot commissioners shall cause the name of the candidate so certified by the chairman of the executive committee to be printed on “stickers” and supplied to the commissioners of election appointed to hold the primary election at the different precincts of the county wherein such candidate will stand for nomination. The procedures prescribed in section four of article six of this chapter, relating to the use of stickers in general elections, shall be adaptable and applicable in primary elections where not inconsistent with any provisions hereof.

Sec. 12. Official and Sample Ballots; Color.—There shall be a separate ballot printed on different colored paper, for each political party participating in the primary election, and the ballot of no two parties shall be of the same color or tint. The secretary of state shall select and determine the color of the paper of the ballot of each of
the parties, and shall notify the clerk of the circuit court of each county thereof, at the time he certifies the names of the candidates of the various parties to said clerk, as herein provided.

The same color of paper selected and designated by the secretary of state for any party shall also be used for sample ballots of such party; but there shall be printed across the face of such sample ballot in large letters the words "sample ballot," and no sample ballot shall be voted or counted in any election.

Sec. 13. Form and Contents of Ballots.—The official primary ballot shall contain at the left of each column of names of candidates, a perpendicular column, and shall be so printed as to leave a square at the left of each name on the ballot.

On such primary ballot, the names of candidates for president of the United States, for United States senator, for representative in congress, and for delegates to the national convention of the party, shall be placed in the first column of candidates; the names of candidates for all state offices, and all other offices to be filled by the voters of a political division greater than a county, including the state executive committee, in the second column; the names of all candidates for county offices, including members of the house of delegates and congressional and senatorial executive committees, shall be placed in the third column; and the names of all candidates for office in the magisterial districts shall be placed in the fourth column.

The face of every primary election ballot shall conform as nearly as practicable to that used at the general election.

The secretary of state, or the circuit court clerk, as the case may be, shall arrange the names of the candidates to be printed on the ballot in alphabetical order, according to the surname, under the title of the respective offices upon the ballot.

A separate ballot, in connection with a primary election, for election of members of county board of education, shall
be printed in bold type, under the caption, “Nonpartisan Ballot for Election of Members of the ....................... County Board of Education.” The names of the candidates for election to the county board of education, and the number of candidates for which each voter is entitled to vote shall be printed beneath the caption, without reference to political party affiliation, and without designation as to a particular term of office.

In printing each set of ballots the position of the names of the candidates shall be changed in each office division as many times as there are candidates in that office division. As nearly as possible an equal number of ballots shall be printed after each change. In making the change of position, the printer shall take the line of type containing the first name in the office division concerned and place it at the bottom of the list of names in that division and move up the column so that the name that before was second shall be first after the change. After the ballots are printed they shall be kept in separate piles, one pile for each change in position, and shall then be gathered by taking one from each pile. Sample ballots shall be in the same form as the official ballot, but the order of the names thereon need not be alternated.

All ballots used in primary elections shall be printed on paper conforming as nearly as practicable in weight, texture, and color to the samples furnished by the secretary of state, and the paper shall be sufficiently thick so that the printing cannot be discernible from the back. On the back of the ballot shall be printed in black ink, and in plain legible, black face pica type, the name of the political party as contained in the heading or “Nonpartisan Board of Education,” as the case may be, followed by the word “ballot.” Under this designation shall be printed two blank lines followed by the words “poll clerks.”

Sec. 14. General Provisions Applicable to Primary Elections.—Provisions of article one of this chapter relating to ballot commissioners, election commissioners and clerks, procedures for obtaining election supplies and conducting elections, loss and replacement of election supplies, challenge of voters, leaves of absence for voting,
election expenses and recount procedures shall control and govern primary elections wherever applicable.

In all other particulars, when no specific provision is made in this article for the control, conduct and government of any phase of primary elections, resort shall be had to other provisions of this chapter which may be applicable thereto and controlling thereof.

Sec. 15. Ascertaining and Certifying Primary Election Results.—When the polls are closed, the commissioners of election and the poll clerks shall proceed to ascertain the result of the election as follows:

(a) The commissioners shall ascertain the number of ballots destroyed during the election and the number of ballots remaining not voted;

(b) The commissioners and clerks shall also ascertain from the poll books, and set down therein the total number of ballots of each party cast. The commissioners shall report, over their signatures, to the clerk of the county court, the number of votes of each party cast, the number of ballots destroyed during the election, and the number of ballots not voted. All unused ballots shall at the same time be returned to the clerk of the county court, who shall immediately destroy them by fire or otherwise;

(c) The ballot box shall be opened and one of the commissioners shall take therefrom one ballot at a time, in the presence of all the other officers, and shall announce what political party’s ballot it is, and shall read therefrom the result of the vote on such ballot for each office, and hand the ballot to another of the commissioners differing in politics from himself, who, if satisfied that it is correctly read, shall string the same on thread. The ballots of each party shall be strung on separate threads. Each poll clerk shall keep an accurate tally of the contents of each ballot of each party on tally paper, which shall be provided for the purpose, so as to show the number of votes received by every person for any office. The ballots shall be counted as they are strung upon the thread, and whenever the number counted for any party shall equal the number of votes entered upon the poll book of that party, any other ballot of such party found in the ballot
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34 box shall be immediately destroyed by fire or otherwise, without unfolding the same, or allowing anyone to examine or know the contents thereof;

37 (d) As soon as the results at the precinct are ascertained, the commissioners and clerks shall make out and sign four certificates, for each party represented, of the vote for all candidates of such party, in the following form:

Certificate of result for ________________ party candidates.

We, the undersigned commissioners and poll clerks of the primary election held at precinct No. ________ of __________ district of ________ County, W. Va., on the ________ day of __________, 19 ______, do hereby certify that having been first duly sworn, we have carefully and impartially ascertained the result of said election at said precinct for the candidates on the official ballot of the ________________ party, and the same is as follows:

For the office of governor, A. B. received ________ votes.
For the office of governor, E. F. received ________ votes.
For the office of governor, G. H. received ________ votes.
(And so on as to each office for which any candidate was voted for, stating in words and figures the number of votes cast for each candidate.)

Given under our hands this ________ day of __________, 19 ______.

Three of such certificates of result of election, for each party, shall then be sealed in separately addressed envelopes, furnished for the purpose, and shall be disposed of by the precinct commissioners as follows: One certificate for each party shall be returned, under seal, to the clerk of the county court, with the election returns; one for each party shall be delivered by the commissioners to the clerk of the circuit court of the county; and one for each party shall be sent by registered mail to the secretary of state: Provided, however, That it shall not be necessary for the precinct commissioners and clerks to include, in the certificates to the secretary of state, the votes cast for any candidates for county and district offices, other than for members of the Legislature. The one not sealed up shall be posted on the outside of the front door of the
polling place in said precinct. All ballots voted for candidates of each party shall be sealed up in separate envelopes and the commissioners and clerks shall each sign his name across the seal. In all precincts in which a receiving board and a counting board of election officers are appointed, the work of counting the votes and of ascertaining and certifying the result shall be divided between the two boards, and be performed by them, respectively, in the same manner provided in article one of this chapter for counting the votes and ascertaining and certifying the result of a general election.

Sec. 16. Return of Supplies and Certificates.—Within twelve hours after completion of the count, tabulation and declaration of the result of the primary election in each precinct, one of the commissioners at such precinct, designated for that purpose, shall return to the clerk of the county court the ballot boxes, registration list, and the several packages of ballots, poll books, tally sheets, certificates, and all other election supplies and returns, except he shall deliver to the clerk of the circuit court, within the same time, packages containing one poll book, one tally sheet, and one certificate of each political party prepared and sealed as provided in the next preceding section.

Sec. 17. Canvassing and Certifying Returns; Recount Procedures.—The county court, sitting as a board of canvassers, shall meet at the courthouse of the county on the Friday next succeeding any primary election and shall proceed to canvass the returns of such election. The procedures prescribed in section nine of article six of this chapter, relating to canvass of general election returns, shall, where adaptable, be applied in the canvass of the primary election returns. The board shall proceed to ascertain the result of such election in the county and district, and election precincts thereof, and cause to be prepared and recorded in the primary election precinct record book, a table or tables which shall show, as to each candidate of each political party for each office, the number of votes cast for him at each precinct, and the total number thereof cast in the entire county. The board shall then make up
and enter in said record book a certificate for each political party, showing, as to each candidate for each political party for each office, the total number of votes (in words and also in figures) cast for him in the entire county and the number of votes received by all the candidates of such party in such district, which shall be in the following form:

The board of canvassers of the county of ________________, State of West Virginia, having carefully and impartially examined the returns of the primary election held in said county on the ______ day of _________________, 19______, do hereby certify that in said county or district, at said election, on the official ballot of the ___________ party for the office of _________________, A.B. received ___________________ (______) votes; C. D. received ___________________ (______) votes.

And so on for each office for each political party according to the truth. When the certificates are all entered, the report shall be signed by the members of the board or a majority thereof. Such members shall also sign separate certificates of the result of said election, within the county, for each of the offices to be filled by each political party, as provided by the following section.

The provisions of article six of this chapter, relating to the recount of votes in general elections, shall, to the extent applicable, be operative in primary and other elections conducted under provisions of this article.

Sec. 18. Disposition of Certificates of Results.—The certificates of the board of canvassers made pursuant to the preceding section shall be by them disposed of as follows: One of the certificates showing the votes received by each candidate of each party for each office to be filled by the voters of a political division greater than a county, including members of the state executive committee, shall be filed with the secretary of state, and by him preserved in his office, and a copy thereof filed in the office of the clerk of the circuit court of the county of such board, to be preserved by such clerk, and which shall be open to public inspection; one certificate showing the votes received by each candidate of each party for each office to be filled by the voters of the county or magisterial district within such county, including mem-
bers of the county executive committee, shall be filed with the clerk of the circuit court, and by him preserved in his office. If requested, the board of canvassers shall furnish to the county chairman of each political party a certificate showing the number of votes received by each of the candidates of such party in the county or any magisterial district therein.

The secretary of state shall certify, under the seal of the state, to the clerk of the circuit court of each county in which a candidate is to be voted for, the name of the candidate of each political party receiving the highest number of votes in the political division in which he is a candidate, and who is entitled to have his name placed on the official ballot in the general election as the nominee of the party for such office. The secretary of state shall also certify in the same manner the names of all candidates nominated by political parties or by groups of citizens, not constituting a political party, in any manner provided for making such nominations in this chapter.

Sec. 19. Vacancies in Nominations; How Filled; Fees.—If any vacancy shall occur in the party nomination of candidates for office, caused by the death, withdrawal, failure to make a nomination for the office at the primary election, or otherwise, it may be filled and the name of the candidate certified by the executive committee of the political party for the political division in which the vacancy occurs. If such vacancy be not filled by the executive committee by the sixty-fifth day next preceding the date of the election, it shall be lawful for the chairman of the political party executive committee for the political division to fill such vacancy, make a certificate thereof, and file the same with the officer with whom the original certificate of nomination was or might have been regularly filed. Such certificate shall be filed not later than the sixtieth day next preceding the date of the election and, when filed, such officer shall proceed therewith in the same manner in all respects as in cases of original nominations. When any such vacancy exists because of failure to make a nomination for the office at the primary election, no nomination for such office shall be deemed filed under provisions of this section until the
required filing fee for such office candidacy shall have been paid as provided in section eight of this article.

Sec. 20. Election Contests and Court Review.—Any candidate for nomination for or election to an office to be filled by the voters of the state or any political subdivision thereof or any candidate for membership on any county political party executive committee, may contest the primary election before the county court of the county in which any primary election procedures, practices or results may be in issue. The procedure in such case shall be the same as that governing the contest of a general election by candidates for county offices or offices in magisterial districts. The decision of the county court upon such contest may be reviewed by the circuit court of the county and by the supreme court of appeals of the state. Wherever practicable, the circuit court, on review, may, by order entered of record, consolidate and hear together any such primary election cases arising in one or more counties of the circuit, and the supreme court of appeals, on further review, may likewise consolidate and hear together any such cases whenever considered practicable by the court so to do.

Any action of a political party executive committee in the discharge of any of the duties imposed upon such committee by this article, or of any board of election officials in conducting and ascertaining the result of the primary election, or of any board of canvassers in canvassing and certifying the result of the primary election for the county, may be reviewed by the circuit court of the county, upon the petition of any candidate, political committeeman or delegate voted for at such primary and affected adversely by the action of such committee, board of election officials, or board of canvassers. From the judgment of the circuit court in any such proceeding, an appeal shall lie to the supreme court of appeals of the state.

Any such contest, or petition for review, of a candidate for a nomination not finally determined within ten days next preceding the date of the next election after the primary, or of a candidate for delegate to any convention
within ten days next preceding the date fixed for holding
the convention, shall stand dismissed, and the person
shown by the face of the returns of the primary election
to be nominated for any office shall be entitled to have
his name printed upon the regular ballot to be voted at
the election, and the person shown upon the face of the
returns to have been elected as a delegate to any con-
vention shall be entitled to sit in such convention as a
delegate.

Sec. 21. Party Conventions to Nominate Presidential
Elector Candidates; Organization; Duties.—Candidates for
presidential electors shall be nominated by the delegated
representatives of the political party assembled in a state
convention to be held between the first and fifteenth days
of August next preceding any general election at which
presidential electors are to be elected. The state execu-
tive committee of the political party, by resolution, shall
designate the place and fix the date of such convention,
shall prescribe the number of delegates thereto, and shall
apportion the delegates among the several counties of
the state in proportion to the vote cast in the state for
the party’s candidate for governor at the last preceding
general election at which a governor was elected. The
state executive committee shall also ascertain and design-
ate all offices for which candidates are to be nominated
at such convention.

At least sixty days prior to the date fixed for holding
any state convention, the chairman of the party’s state
executive committee shall cause to be delivered to the
party’s county executive committee in each county of the
state a copy of the resolutions fixing the time and place
of holding the state convention and prescribing the num-
ber of delegates from each county to the convention.
Within ten days after receipt of the copy of such resolu-
tions, the party executive committee of each county shall
meet and, by resolution, shall apportion the delegates to
the state convention among the several magisterial dis-
tricts of the county, on a basis of the vote received in
the county by the candidate of the party for governor at
the last preceding general election at which a governor
was elected, but in such apportionment of county dele-
gates each magisterial district shall be entitled to at least one delegate to such state convention. The party's county executive committee shall call a meeting of the members of the political party in mass convention in the several magisterial districts of the county, which district meeting shall be held at least thirty days prior to the date fixed for the state convention and at which meeting the members of the political party in each magisterial district shall elect the number of delegates to which such district is entitled in the state convention.

The meeting place in the magisterial district shall be as central and convenient as can reasonably be selected, and all recognized members of the political party shall be entitled to participate in any such mass convention and in the selection of delegates. Notice of the time and place of holding the several magisterial district mass conventions and of the person who shall act as temporary chairman thereof shall be given by publication in at least two issues of a newspaper of the political party, if any such there be, published in the county, the first publication to be not more than fifteen and the second publication to be not less than five days prior to the date fixed for holding the convention. If no such newspaper be published in the county, notice may be given by posting the same in at least five conspicuous places in the magisterial district, at least ten days before the date of the mass convention. The notice published or posted shall specify the number of delegates which each magisterial district in the county is entitled to elect to the state convention.

Upon assembling, the mass convention of each magisterial district shall choose a chairman and a secretary, who, within five days after the holding of such convention, shall certify to the chairman of the state executive committee of the political party and the chairman of the county committee of the political party, the names and addresses of the parties selected as delegates to the state convention.

All contests over the selection of delegates to conventions shall be heard and determined by the party executive committee of the county from which the delegates
are chosen, and such county executive committee shall, upon written petition of any contestant, meet for such hearings and determinations within ten days after the holding of such magisterial district mass convention. The circuit court of the county and the supreme court of appeals of the state shall have concurrent original jurisdiction to review, by mandamus or other proper proceeding, the decision of a county executive committee in any contest.

The delegates chosen and certified by and from the several magisterial districts in the state, and, in the event of any contest, those prevailing in the contest, shall make up the state convention. The number present of those entitled to participate in any convention shall cast the entire vote to which the county is entitled in such convention, and it shall require a majority vote to nominate any candidate for office.

All nominations made at state conventions shall be certified within fifteen days thereafter, by the chairman and the secretary of the convention, to the secretary of state, who shall certify them to the clerk of the circuit court of each county concerned, and the names of the persons so nominated shall be printed upon the regular ballot to be voted at the ensuing general election, except that the names of the presidential elector candidates shall not be printed thereon.

The delegates to any state convention may formulate and promulgate such party platform or declaration of party principles as to them shall seem advisable.

Sec. 22. Other Party and Group Nominations; Procedure.—Any political party which polled less than ten percent of the total vote cast only for governor at the general election immediately preceding may nominate candidates and select committees by party conventions, provided such nominations are made and the certificates thereof filed within the time and in the manner provided in section twenty-four of this article, or by certificate in the same manner as groups of citizens may make nominations as provided in the following section.

No delegate or person participating in the selection of
delegates under this section shall vote in any primary election held in that year.

Sec. 23. Certificate Nominations; Requirements and Control; Penalties.—(a) Groups of citizens having no party organization may nominate candidates for public office otherwise than by conventions or primary elections. In such case, the candidate or candidates, jointly or severally, shall file a declaration containing the name of the political party he or they propose to represent, its platform, principles or purposes, with the secretary of state if the office is to be filled by the voters of more than one county, or with the clerk of the circuit court of the county if the office is to be filled by the voters of one county or political subdivision thereof; such declaration to be filed at least thirty days prior to the time of filing the certificate provided by section twenty-four of this article, and at the time of filing of such declaration each candidate shall pay the filing fee required by law, and if such declaration is not so filed or the filing fee so paid the certificate shall not be received by the secretary of state, or clerk of the circuit court, as the case may be;

(b) The person or persons soliciting or canvassing signatures of duly qualified voters on such certificate or certificates, shall be residents and qualified, registered voters, of the magisterial district of the county in which such solicitation or canvassing is made, and may solicit or canvass duly registered voters resident within their own respective magisterial district, but must first obtain from the clerk of the county court of which such canvasser or solicitor is a resident, credentials which must be exhibited to each voter canvassed or solicited, which credentials may be in the following form or effect:

State of West Virginia, County of  , ss:

This certifies that , a duly registered voter of Precinct No. , District, of this county and state; whose postoffice address is , is hereby authorized to solicit and canvass duly registered voters residing in District of this County to sign a certificate purporting to nominate (here place name of candidate heading list on certificate)
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39 for the office of .......... and others, to represent the
40 .......... Party at the general election to be held on
41 .........., 19 ...... .
42 Given under my hand and the seal of my office this
43 .......... day of .........., 19 ...... .
44
45 Clerk, County Court of .......... County.
46 The clerk of each county court, upon proper applica-
47 tion made as herein provided, shall issue such credentials
48 and shall keep a record thereof;
49 (c) The certificate shall be personally signed by duly
50 registered voters, in their own proper handwriting or by
51 their marks duly witnessed, who must be residents within
52 the magisterial district of the county wherein such
canvass or solicitation is made by the person or persons
duly authorized. Such signatures need not all be on one
53 certificate. The number of such signatures shall be equal
to not less than one per cent of the entire vote cast at the
54 last preceding general election for the office in the state,
district, county or other political division for which
55 the nomination is to be made, but in no event shall the
56 number be less than twenty-five. Where two or more
57 nominations may be made for the same office, the total
58 of the votes cast at the last preceding general election
59 for the candidates receiving the highest number of votes
60 on each ticket for such office shall constitute the entire
vote. No signature on such certificate shall be counted
61 unless it be that of a duly registered voter of a precinct
62 within the magisterial district wherein such certificate
63 was presented. No person signing such certificate shall
64 vote at any primary election to be held to nominate can-
65 didates for office to be voted for at the election to be held
66 next after the date of signing such certificate;
67 (d) Such certificates shall state the name and residence
68 of each of such candidates; that he is legally qualified to
69 hold such office; that the subscribers are legally qualified
70 and duly registered as voters and desire to vote for such
71 candidates; and shall designate, by not more than five
72 words, a brief name of the party which such candidates
73 represent and may adopt a device or emblem to be print-
ed on the official ballot. All candidates nominated by the
signing of such certificates shall have their names placed
on the official ballot as candidates, as if otherwise nomi-
nated under the provisions of this chapter. At the top of
each certificate shall be the following form or to the fol-
lowing effect:

State of West Virginia, County of .......... , ss:

This is to certify that we, the undersigned, are duly
registered voters, resident within the magisterial district
of ............ , County of .... , State of West Virginia,
and do hereby make the following nominations for pub-
lic office, to-wit:

For House of Delegates

A ......... B ................. , Residence .................
(And so on for each nomination so made)

And, we further certify that each of said candidates is
legally qualified to hold the office for which he is nomi-
nated; that we are legally registered and qualified voters
and desire to vote for said candidates and acknowledge
that we are aware that no person signing this certificate
can legally vote at the primary election next ensuing after
the date of filing of this certificate. The name of the
party which the candidates represent is (here state name)
and the device or emblem of the party is (here affix de-
vice).

Signature  Precinct No.  Residence  Postoffice
(Names of  (Number of  (Describe  (Name of
Voters)  precinct  it)  office):

in magisterial
district)

(e) The secretary of state, or the clerk of the circuit
court, as the case may be, may investigate the validity of
such certificates and the signatures thereon, and if upon
such investigation there may be doubt as to the legitimacy
and the validity of such certificate, he may request the
attorney general of the state, or the prosecuting attorney
of the county, to institute a quo warranto proceeding
against the nominee or nominees by certificate to deter-
mine his or their right to such nomination to public of-
flee, and upon request being made, the attorney general
or prosecuting attorney shall institute such quo war­
ranto proceeding; and

(f) Any person violating the provisions hereof, in ad­
dition to penalties prescribed elsewhere for violations of
this chapter, shall be guilty of a misdemeanor, and, upon
conviction, shall be fined not more than one thousand
dollars, or confined in the county jail for not more than
one year, or both, in the discretion of the court.

Sec. 24. Filing of Nomination Certificates; Time.—All
certificates nominating candidates for office under the
preceding section, including a candidate for the office of
presidential elector, shall be filed, in the case of a candi­
date to be voted for by the voters of the entire state or by
any subdivision thereof other than a single county, with
the secretary of state, and in the case of all candidates for
county and magisterial district offices, including all of­
ices to be filled by the voters of a single county, with
the clerk of the circuit court of the county, not later than
the day preceding the date on which the primary election
is held. After such date no such certificate shall be re­
ceived by such officers.

Article 6. Conduct and Administration of Elections.
Section
1. Provisions of article to govern general elections; applicability of
other provisions of chapter; applicability of article to primary
and special elections.
2. Preparation and form of general election ballots.
3. Publication of nominations.
4. Late nominations; stickers.
5. Rules and procedures in elections other than primaries.
7. Ballot irregularities; procedures.
8. Precinct returns; certificates; procedures.
9. Canvass of returns; recounts; contests.
10. Certificates of election results.
11. Disposition of certificates; procedures thereon.
12. Tie vote procedures.

Section 1. Provisions of Article to Govern General Elec­
tions; Applicability of Other Provisions of Chapter; Ap­
plicability of Article to Primary and Special Elections.—
The provisions of this article shall govern the conduct and
administration of general elections. Other provisions of
this chapter, where applicable, shall be considered supple-
mentary and complementary to the provisions of this article regulating and controlling general elections.

In all voting precincts in which voting machines have been approved, procured, and are in use, the provisions of article four of this chapter shall be applicable to the conduct and administration of general elections.

Where applicable and not inconsistent with other positive provisions of law, the provisions of this article shall govern the conduct of and procedures in primary and special elections.

Sec. 2. Preparation and Form of General Election Ballots.—All ballots prepared under the provisions of this article shall be printed in black ink on number two white book paper sufficiently thick so that the printing cannot be distinguished from the back, and shall contain the names of every candidate whose nomination for any office to be voted for at the election has been certified and filed according to law, and no others, except that if it shall appear to the satisfaction of the ballot commissioners that a person has been legally nominated as a candidate for an office and is lawfully entitled to have his name upon the ballot and no certificate of the nomination has been received by the clerk of the circuit court, they shall print the name of such candidate upon the ballot in its proper place.

The tickets, except the heading, which shall be in display type, shall be printed in eight point type; the name or designation of the office and the residence of the candidate in lower case letters, and the name of the candidate in capital letters. The name and residence of the candidate may be printed in the same line. The name of each candidate shall be printed in a space defined by ruled lines, and with a black square on its left inclosed by heavy dark lines. If, upon any ticket, there be no candidate or candidates for a designated office, a blank space equal to the space that would be occupied by such name or names, if they were printed thereon, with the blank space herein provided for, shall be left. The heading of each party ticket including the name of the party and the device or emblem above and the large circle between the device or emblem and such name, shall be
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30 separated from the rest of the ticket by heavy lines and the
circle above the name of the party in which the voter is to
place the cross mark, if he desires to vote the straight tick-
et, shall be defined by heavier lines than the lines defining
the blank spaces before the names of candidates, and such
circle shall be surrounded by the following words printed
in heavy face six point type: "For a straight ticket mark
within this circle." Each party ticket shall be separated
from other party tickets and bordered on either side by a
heavy border, or a broad solid line, at least one sixteenth
of an inch wide, and the edges of the ballot on either side
trimmed off to within one-half inch of the border or solid
line described.

The names of the candidates shall be arranged on the
ballot in tickets or lists, in separate columns under the
respective party or political or other designation certified,
each column or ticket containing the names of candidates
ominated by the same political party and no others. In
elections for presidential electors, the names of candidates
for electors of any political party or group of petitioners,
shall not be placed on the ballot, but shall, after nomina-
tion, be filed with the secretary of state. In place of their
names, there shall be printed first on the ballots the names
of the candidates for president and vice president, re-
spectively, of each such party or group of petitioners, and
they shall be arranged under the title of the office. Before
the names of such candidates for president and vice
president of each party, or group, a single square shall
be printed, in front of a brace, in which the voter shall
place the cross mark for the candidate of his choice for
such offices. A vote for any of such candidates shall be
a vote for the electors of the party by which such candi-
dates were named, and whose names have been filed with
the secretary of state.

The names of the candidates on each ticket shall be
arranged in groups, with a heading over each group
printed in heavy faced eight point type to indicate the
political divisions in which such group is to be voted for.
The arrangement of the ballot shall conform as nearly as
practicable to the plan here given:
The tickets of the several political parties shall be printed on the ballot in parallel columns, each ticket in a separate column headed by the chosen device, and the tickets in such order on the ballot and the names of the office in such order on the ticket as the secretary of state shall direct, preference, however, being given to the political party which cast the highest number of votes for the head of the ticket at the last preceding presidential election, and so on. No ticket or list of candidates shall be printed under the name of any party containing more candidates for any office than are to be elected.

The ballot shall be so printed as to give each voter a clear opportunity to designate by a cross mark in a large, blank, circular space, three-quarters of an inch in diameter, below the device and above the name of the party at the head of the ticket or list of candidates, his choice of a party ticket and desire to vote for each and every candidate thereon; and by a cross mark, in a blank, inclosed space on the left and before the name of each candidate, his choice of particular candidates.

On the back of the ballot shall be printed or stamped in black ink the words “Official Ballot,” with the date of
the election, and underneath shall be two blank lines, fol-
lowed by the words "Poll Clerks."

Sec. 3. Publication of Nominations.—At least ten days
before an election to fill any public office at which the
evoters of any county are entitled to vote, the clerk of the
circuit court of such county shall cause to be published
in two newspapers, if such there be published within the
county, representing the political parties which at the last
preceding general election cast the largest and second
largest number of votes in the state, or, if there be only
one newspaper published therein, then in such newspaper,
the nominations for office certified to him and filed in his
office, excepting nominations for office to be filled by the
voters of any subdivision less than a county. He shall
make two publications thereof in each of such newspapers
before the election, the second of which in each newspaper,
shall be on the last day upon which such newspaper is
issued before the election. If there be no newspaper pub-
lished in the county, the clerk of the circuit court shall,
at least ten days before the election, cause to be posted
in his office, and at some public place in each voting pre-
cinct in the county, a printed notice of the nominations for
office certified to and filed by him as aforesaid. Whenever
it shall appear by affidavit that an error or omission has
occurred in the publication of the names or description
of candidates nominated for public office, or in the printing
of the ballots, the board of ballot commissioners shall cor-
rect such error. The list of nominations published or
posted by clerks of the circuit courts of the several coun-
ties shall be arranged in the order and form in which
they will be printed upon the ballot.

Sec. 4. Late Nominations; Stickers.—If a nomination to
fill a vacancy be made by a political party executive com-
mittee or, on its failure to so act within the time pre-
scribed by law, be made by the chairman of such commit-
tee, and be certified to the clerk of the circuit court after
the ballots to be used at the ensuing election shall have
been printed, the clerk shall forthwith lay such certificates
before the ballot commissioners who, without delay, shall
prepare, or cause to be prepared, and deliver, or cause to
be delivered, to the election commissioners of each pre-
cinct in which such candidate is to be voted for, a number
of stickers, containing only the name of such candidate,
at least equal to the total number of ballots provided for
such precinct; but no such stickers shall be furnished to
or received by any person except a commissioner of elec-
tion. It shall be the duty of the commissioners holding the
election to deliver such stickers to the poll clerks, who
shall, in the presence of the election commissioners, affix
one of such stickers in a careful manner at the proper place
for the name of the candidate, upon each ballot to be
voted at the election, before the poll clerks shall sign their
names on the ballots. Such stickers may be delivered to
the election officers, by the clerk of the county court, with
the ballots, poll books and other supplies.

Sec. 5. Rules and Procedures in Elections Other Than
Primaries.—The provisions of article one of this chapter
relating to elections generally shall govern and control
arrangements and election officials for the conduct of elec-
tions under this article. The following rules and pro-
cedures shall govern the voter in his voting for candidates
in general and special elections:

(a) If the voter desires to vote a straight ticket, or, in
other words, for each and every candidate for one party
for whatever office nominated, he shall either:

(1) Make a cross mark in the circular space below the
device and above the name of the party at the head of the
ticket; or

(2) Make a cross mark on the left and opposite the
name of each and every candidate of such party in the
blank space provided therefor; or

(3) Mark out, by lines, all the tickets on the ballot,
other than the ticket he desires to vote.

(b) If the voter desires to vote a mixed ticket, or, in
other words, for candidates of different parties, he shall
either:

(1) Omit making a cross in the circular space above
the name of the party, and make a cross mark in the blank
space before the name of each candidate for whom he
desires to vote on whatever ticket the name may be; or
(2) Make a cross mark in the circular space above the
name of the party for some of whose candidates he desires
to vote, and then make a cross mark before the name of
any candidate of any other party for whom he may desire
to vote; in which case the cross mark in the circular space
above the name of the party will cast his vote for every
candidate on the ticket of such party except for offices for
which candidates are marked on other party tickets, and
the cross marks before the name of such candidates will
cast his vote for them; or
(3) Write with black lead pencil or other means the
name of any person for whom he desires to vote in the
space immediately below the name of the opposing can-
didate for the same office, on the ticket voted by him, and
the name so written shall be counted.
If, in marking either a straight or mixed ticket as above
defined, a cross mark is made in the circular space above
the name of a party at the head of the ticket, and also one
or more cross marks made before the name or names of can-
didates on the same ticket for offices for which candidates on
other party tickets are not individually marked, such
marks before the name of candidates on the ticket so
marked shall be treated as surplusage and ignored.
If the voter desires to vote for any person whose name
does not appear on the ticket, he may substitute the name
by writing it with black lead pencil or other means in the
proper place, and making a cross mark in the blank space
at the left of the name so written.
If the voter marks more names than there are persons
to be elected to an office, or if, for any reason, it is im-
possible to determine the voter's choice, for an office to
be filled, the ballot shall not be counted for such office.
No ballot shall be rejected for any technical error which
does not make it impossible to determine the voter's
choice.

Sec. 6. Ballot Counting Procedures.—When the polls
are closed in an election precinct where two election
boards have served, both the receiving and counting
boards shall conclude the counting of the votes cast, the
tabulating and summarizing of the number of the votes
cast, unite in certifying and attesting to the returns of
the election, and join in making out the certificates of the
result of the election provided for in this article. They
shall not adjourn until the work shall be completed.

In all election precincts wherein the election shall be
conducted by a single election board, immediately on
closing the polls the commissioners and clerks shall pro-
ceed to ascertain the result of the election in the follow-
ing manner: The ballot box shall then be opened, and
one of the commissioners taking therefrom one ballot
at a time, in the presence of all the other officers, shall
read therefrom the designations of the offices to be filled,
and the names of the persons voted for, for each office,
and hand the ballot to another of such commissioners,
 differing in politics from himself, who, if satisfied that it
was correctly read, shall string it on a thread. The con-
tents of the ballots, as they are read, shall be entered by
the poll clerks, under the supervision of the commis-
sioners, on tally sheets for the purpose, by suitable marks,
in ink, made opposite to or under the name of each person
voted for, so as to show the number of votes received by
every person, for any office to be filled. The ballots shall
be counted as they are strung upon the thread, and when-
ever the number counted shall be equal to the number
of votes entered upon the poll books, the excess, if any,
remaining in the ballot box shall immediately be de-
stroyed by fire or otherwise, without unfolding or un-
rolling the same, or allowing anyone to examine or know
the contents thereof.

They shall not adjourn until all of the votes are counted
and certificates of the result made and signed by them.
In precincts wherein there are double boards, the count-
ing boards, in counting the ballots, shall proceed in the
manner prescribed in this section.

Sec. 7. Ballot Irregularities; Procedures.—If two or
more ballots be found folded or rolled together and the
names voted for thereon be the same, one of them only
shall be counted; but if the names voted for thereon be
different, in any particular, neither of them shall be counted except as hereinbefore provided; and in either case, the commissioners of election shall, in writing in ink, place a common number on such ballots and state thereon that they were folded or rolled together when voted. If any ballot be found to contain more than the proper number of names for any office, such ballot shall not be counted as to such office. In any election for state senator, if a person be voted for on any ballot who is not a resident of the proper county, as required by the fourth section of the sixth article of the constitution, such ballot shall not be counted for said office. Any ballot which is not indorsed with the names of the poll clerks, as provided in this chapter, shall be void and shall not be counted; and any ballot, or part of a ballot from which it is impossible to determine the elector's choice of candidates, shall not be counted as to the candidates affected thereby.

Sec. 8. Precinct Returns; Certificates; Procedures.—As soon as the results are ascertained, the commissioners of election and poll clerks at each place of voting shall make out and sign four certificates thereof, in the following form or to the following effect: "We, the undersigned, who acted as commissioners and poll clerks of the election held at precinct No. .......... in the district of .........., and county of .........., on the .......... day of .........., do certify that, having been first duly sworn, we have fairly and impartially held the said election according to law, and the result thereof is as follows: For the office of .........., (here designate the office, as for example, 'Delegate for the county of Barbour,' or 'Senator for the first senatorial district,' 'Judge of the first circuit,' 'Representative in the congress of the United States for the first congressional district,' 'Governor of the State,' 'Judge of the supreme court of appeals,' 'Justice of the peace of said district,' and so forth, as the case may be), 'A. B. received .......... votes, C. D. .......... votes, E. F. .......... votes,' and so on throughout stating, according to the truth, the full name of every person voted for, for every office, and in words at length, and also in figures, the number of votes received; and concluding as follows:
24 Given under our hands this .......... day of .........................
25 The certificates shall contain complete returns of the polls
taken at such place of voting for every office to be filled,
and shall be sealed and disposed of as is provided in sec-
tion fifteen of article five of this chapter for certificates
as to the result of a primary election. When the certifi-
cates are signed, the ballots shall be inclosed by the com-
missioners in an envelope which they shall seal up, and
write their names in ink across the place or places where
it is sealed, and indorse in ink on the outside of the
envelope as follows: “Ballots of the election held at
precinct No. .........., in the district of ...................., and
county of ................., the ........ day of .................”
37 One of the commissioners of the election shall, within
twelve hours after the completion of the count, tabula-
tion and declaration of the result, deliver the ballots so
sealed up, one set of the poll books and tally sheets, one
of such certificates, the registration book and the ballot
box or boxes, to the clerk of the county court, and one
certificate and set of poll books and tally sheets, to the
clerk of the circuit court, all of which shall be preserved
in the respective offices of said clerks as in this chapter
provided.

Sec. 9. Canvass of Returns; Recounts; Contests.—The
2 commissioners of the county court shall be ex officio a
3 board of canvassers, and, as such, shall keep in a well-
bound book, marked “election record,” a complete record
5 of all their proceedings in ascertaining and declaring the
6 result of every election in their respective counties. They
7 shall convene as such canvassing board at the courthouse
8 on the fifth day (Sundays excepted) after every election
9 held in their county, or in any district thereof, and the
10 officers in whose custody the ballots, poll books, registra-
11 tion records, tally sheets and certificates have been placed
12 shall lay the same before them for examination. They
13 may, if deemed necessary, require the attendance of any
14 of the commissioners, poll clerks or other persons present
15 at the election, to appear and testify respecting the same,
16 and make such other orders as shall seem proper, to
17 procure correct returns and ascertain the true result of
18 the election in their county; but in such case all the
questions to the witnesses and all the answers thereto,  
and evidence, shall be taken down in writing and filed  
and preserved. All orders made shall be entered upon  
the record. They may adjourn from time to time, but  
no longer than absolutely necessary, and, when a ma-  
jority of the commissioners are not present, their meeting  
shall stand adjourned until the next day, and so from day  
to day, until a quorum be present. The board shall pro-  
cceed to open each sealed package of ballots so laid before  
them, and, without unfolding them, count the number in  
each package and enter the same upon their record. The  
balloons shall then be again sealed up carefully in a new  
envelope, and each member of the board shall write his  
name across the place where such envelope is sealed.  
After canvassing the returns of the election, the board  
shall, upon the demand of any candidate voted for at such  
election, open and examine any one or more of the sealed  
packages of ballots, and recount the same; but in such  

case they shall seal the same again, along with the  
envelope above named, and the clerk of the county court  
and each member of the board shall write his name  
across the place or places where it is sealed, and indorse  
in ink, on the outside: "Ballots of the election held at  
precinct No. .........., in the district of ................., and  
county of ................., on the ........ day of ..............."  
Every candidate who demands such recount shall be re-  
quired to furnish bond in a reasonable amount with good  
sufficient surety to guarantee payment of the costs and  
the expenses of such recount in the event the result of  
the election be not changed by such recount; but the  
amount of such bond shall in no case exceed three hun-  
dred dollars. When they have made their certificates and  
declared the results as hereinafter provided, they shall  
deposit the sealed packages of ballots, absent voter bal-  
lots, registration records, poll books, tally sheets, and  
precinct certificates with the clerks of the county and  
circuit courts from whom they were received, who shall  
carefully preserve the same for sixty days, and if there  
be no contest pending as to any such election, and their  
further preservation be not required by any order of a  
court, such ballots, poll books, tally sheets and certificates
shall be destroyed by fire or otherwise, without opening
the sealed packages of ballots; and if there be such contest
pending, then they shall be so destroyed as soon as the
contest is ended. If the result of the election be not
changed by such recount, the costs and expenses thereof
shall be paid by the party at whose instance the same
was made.

Sec. 10. Certificates of Election Results.—Whenever an
election is held in any county or district to fill any na-
tional, state, county, or district office, the board of can-
vassers of the county, or a majority of them, under the
regulations prescribed in the next preceding section, shall
carefully and impartially ascertain the result of the elec-
tion in their county and in each district thereof, and shall
record the same in the following form, or to the follow-
ing effect: “The board of canvassers of the county of

A........ B........ received ......... votes, C........ D........
15 received ......... votes, and E........ F........ received .........
votes. And we further certify that at said election held
in the district of ............... , in the said county, for the
office of ............... , G........ H........ received .........
votes, and I........ J........ received ......... votes.” (And
so on as to each particular office.) In such certificates
shall be set forth, according to the truth, the full name
of every person voted for, and, in words at length, the
number of votes received for any office. When the cer-
tificates are all entered, the record shall be signed by the
board or majority of them. The board shall then sign
separate certificates of the result of the election within
the county, for each of the offices to be filled.

Sec. 11. Disposition of Certificates; Procedures There-

The separate certificates of the board of canvassers,
pursuant to the preceding section, shall be by them
disposed of as follows: Of the certificates respecting the
election for delegate or delegates in the Legislature, they
shall transmit one to each person voted for as delegate,
and shall transmit one to the secretary of state, who shall submit the same to the house, on the first day of the next ensuing session, together with a list of the persons appearing thereby to be elected. Of the certificates respecting the election of state senator, they shall transmit one to each person voted for as state senator, and shall transmit one to the secretary of state, to be submitted by him to the senate, on the first day of the next ensuing session, together with a list of persons appearing thereby to be elected. Of the certificates respecting the election of state officers, one, as to each of such officers, except judge of the supreme court of appeals, shall be sealed and transmitted by such commissioners to the secretary of state indorsed on the envelope as follows: "Returns of the election for state officers." The secretary of state shall deliver the same to the speaker of the house of delegates, on the first day of the next session of the Legislature; and the speaker shall, immediately after the organization of the house, and before proceeding to other business, open and publish the same, in the presence of a majority of each house of the Legislature, which bodies shall, for that purpose, assemble in the hall of the house of delegates. The person having the highest number of votes for any one of such offices shall be declared duly elected thereto; but if two or more persons have the same and the highest number of votes for the same office, the Legislature shall, by a joint vote of the two houses, choose one of said persons for such office; and one of each of such last mentioned certificates shall also be transmitted, under seal, to the governor, who shall immediately tabulate the vote in all the counties, for each office, and cause the same to be printed in some newspaper published at the seat of government. Of the certificates respecting the election for United States senator, member of the house of representatives in the Congress of the United States, judge of the supreme court of appeals, judge of a circuit court, and president and vice president of the United States, respectively, the commissioners shall transmit one in each case to the person voted for, and one to the governor; and the governor shall ascertain who are elected, and make proclamation thereof. Of the certificates respecting the
election of all county and district officers, one shall be transmitted to each person for whom votes were cast.

Sec. 12. Tie Vote Procedures.—Whenever the governor or the board of canvassers of a county is to declare the result of an election, and it appears to him or them that two or more of the persons voted for have received the highest and an equal number of votes for the same office, so that the election to the office is not decided by the returns, he, or they, being required to declare the result, shall decide the tie by the election of one of such persons, but in the event the board of canvassers shall have failed to decide the tie within thirty days after such tie shall have been found by them to exist, upon application to the governor by any one of such persons so voted for, he shall break the tie by the selection of one of such persons and shall certify his choice to such board of canvassers and declare such person duly elected for the office for which such person was a candidate.

Article 7. Contested Elections.

Section 1. State Officers and Judge Contests; Procedure.

If the election of governor, secretary of state, treasurer, auditor, attorney general, commissioner of agriculture, a judge of the supreme court of appeals, or a judge of a circuit court, be contested, the contestant shall give notice, with specifications and affidavit, to the person whose election is contested, within sixty days after the day upon which the election was held, in case the election of governor, secretary of state, treasurer, auditor, attorney general, or commissioner of agriculture, be contested, and within forty-five days after the day upon which the election was held in case the election of a judge of the supreme court of appeals, or a judge of a circuit court, be
contested; and within thirty days thereafter the return
notice shall be given to the contestant. The parties shall
finish taking depositions within forty days after the last
mentioned notice is delivered. The depositions shall be
transmitted to the clerk of the house of delegates, to be
delivered by him to the joint committee or special court
hereinafter provided for. In other respects the regula-
tions contained in this article respecting contests for a
seat in the Legislature shall be observed, so far as they
are applicable.

Sec. 2. Procedure of Legislature on Governor Contest.—
When the election of governor is contested, the notice of
contest and the depositions shall be referred to a joint
committee of the two houses, for examination and re-
port, which committee shall consist of two senators
elected by ballot by the senate, and three delegates elect-
ed in the same manner by the house of delegates. The con-
test shall be determined by the Legislature, both houses
thereof sitting in joint session in the hall of the house of
deleagues, and the president of the senate shall preside.

Sec. 3. Contests before Special Court; Procedure; En-
forcement.—Where the election of secretary of state, au-
ditor, treasurer, attorney general, commissioner of ag-
culture, or of a judge of the supreme court of appeals,
or of a circuit court, is contested, the case shall be heard
and decided by a special court constituted as follows:
The contestee shall select one, the contestant another,
and the governor a third person, who shall preside in said
court; and the three, or any two of them, shall meet at a
time and place within the state to be appointed by the
governor, and, being first duly sworn impartially to de-
cide according to law and the truth upon the petition, re-
turns and evidence to be submitted to them, shall pro-
ceed to hear and determine the case and certify their de-
cision thereon to the governor. They shall be entitled to
ten dollars a day each, and the same mileage as members
of the Legislature, to be paid out of the treasury of the
state, and such special court is hereby given authority to
employ a stenographer at a reasonable compensation, to
be also paid out of the treasury of the state. In all hear-
ings or proceedings before such special court, the evi-
dence of witnesses and the production of documentary
evidence may be required at any designated place of
hearing by such special court, or any member thereof;
and in case of disobedience to a subpoena or other process
of such special court, or any member thereof, such special
court, or any member thereof, or either of the parties to
such contest, may invoke the aid of any circuit court in
requiring the evidence and testimony of witnesses and
the production of papers, books and documents. And
such circuit court, in case of a refusal to obey the subpoena
issued to any person, shall issue an order requiring such
person to appear before such special court and produce
all books and papers, if so ordered, and give evidence
touching the matter in question. Any failure to obey
such order of the circuit court may be punished by such
court as a contempt thereof. A written record shall be kept
of all testimony and other proceedings before such special
court.
Either party to such contest feeling aggrieved by the
final decision of such special court may present his peti-
tion in writing to the supreme court of appeals, or a judge
thereof in vacation, within thirty days after such final
decision is certified to the governor, as hereinbefore pro-
vided, praying for the suspension, setting aside, or vaca-
tion of such final decision. The applicant shall deliver,
or cause to be delivered, a copy of such petition to the
other party to such contest, or, in case of his absence from
the state or from his usual place of abode, he shall mail,
or cause to be mailed a copy of such petition addressed to
his last known postoffice address, before presenting the
same to the court, or the judge. The court, or the judge,
shall fix a time for the hearing on the application, but
such hearing shall not be held sooner than five days, un-
less by agreement of the parties, after the presentation of
such petition, and notice of the time and place of such
hearing shall be forthwith delivered to the other party to
such contest, or, in case of absence from the state or from
his usual place of abode, such notice may be given by
mailing, or causing to be mailed, the same, or a copy
thereof, addressed to him at his last known postoffice
address. If the court, or the judge, after such hearing,
be of the opinion that a suspending order should issue,
the court in its, or the judge in his, discretion, may sus-
pend such final decision and may require bond upon such
conditions and in such penalty, and impose such terms
and conditions upon the petitioner, as are just and rea-
sonable; and the court, or the judge, shall fix a time for
the final hearing on the application. The hearing of the
matter shall take precedence over all other matters be-
fore the court. For such final hearing, and before the day
fixed therefor, the special court shall file with the clerk
of the supreme court of appeals all papers, documents,
testimony, evidence, and records, or certified copies there-
of, which were before it at the hearing resulting in the
final decision from which the petitioner appeals, together
with a copy in writing of its final decision; and, after argu-
ment by counsel, the court shall decide the matter in con-
troversy, both as to the law and the evidence, as may
seem to it to be just and right. The supreme court of ap-
peals is hereby given jurisdiction to enforce the provisions
of this section by writ of prohibition, mandamus and
certiorari, as may be appropriate.

Sec. 4. Contests of Seats in Legislature; Notices and
Procedure.—Any person intending to contest the election
of another as senator or delegate shall, within twenty-one
days after the election, in case of a delegate, and within
thirty days after the election, in case of a senator, give
him notice thereof in writing, and a list of the votes he
will dispute, with the objections to each, and of the votes
rejected for which he will contend. If the contestant ob-
jects to the legality of the election, or the qualification of
the person returned, the notice shall set forth the facts
on which such objection is founded. The person whose
election as delegate is contested shall, within fourteen
days after receiving such notice, and the person whose
election as senator is contested shall, within twenty days
after receiving such notice, deliver to the contestant a
like list of the votes he will dispute and of the objection
to each, and of the rejected votes he will claim; and, if
he has any objection to the qualification of the contestant,
shall specify in such notice the facts on which the objection is founded. Each party shall append to the notice an affidavit that the matters therein set forth, so far as they are stated of his knowledge, are true, and that, so far as they are stated on the information of others, he believes them to be true. If new facts be discovered by either party after he has given notice as aforesaid, he may give an additional notice or notices to his adversary, with specifications and affidavit as above prescribed.

The notice of contest shall be presented to the proper branch of the Legislature, within ten days after its meeting.

Sec. 5. Depositions; Subpoenas; Time; Tie Vote Decision.—Either party may begin to take the depositions in such contests for seats in the Legislature at any time after the delivery of the original notice by the contestant. But reasonable notice of every such deposition shall be given, and such notice shall specify the names of the witnesses to be examined. The depositions may be taken before a justice, notary, or any officer authorized to take depositions in civil suits; and the officer before whom they are taken shall certify and seal the same, and indorse his name across the place where they are sealed, and address and transmit the same, by mail or otherwise, to the clerk of the body in which the seat is contested. When the contest is referred to a committee, the clerk shall deliver the depositions to such committee for examination and report. The parties shall finish taking depositions five days at least before the second Wednesday of January next following. Neither party shall have the benefit of any deposition taken otherwise than as aforesaid, unless further time be given by resolution of the proper branch of the Legislature.

Subpoenas for witnesses shall be issued by the clerk of the circuit court, or by a justice, upon application of either party; and witnesses shall be entitled to the same allowances and privileges, and be subject to the same penalties, as if summoned to attend before the circuit court in civil suits.

If it be ascertained that an equal number of legal votes
was given for the contestant and the person returned, the senate or the house of delegates, as the case may be, in which the contest is pending, shall declare which of them is elected.

Sec. 6. County and District Contests; Notices; Time.—In all cases of contested elections, the county court shall be the judge of the election, qualifications and returns of their own members, and of all county and district officers.

A person intending to contest the election of another to any county or district office, including judge of any criminal, intermediate, common pleas, or other inferior court, or any office that shall hereafter be created to be filled by the voters of the county or of any magisterial or other district therein, shall, within ten days after the result of the election is declared, give the contestee notice in writing of such intention, and a list of the votes he will dispute, with the objections to each, and of the votes rejected for which he will contend. If the contestant object to the legality of the election, or the qualification of the person returned as elected, the notice shall set forth the facts on which such objection is founded. The person whose election is so contested shall, within ten days after receiving such notice, deliver to the contestant a like list of the votes he will dispute, with the objections to each, and of the rejected votes for which he will contend; and, if he has any objection to the qualification of the contestant, he shall specify in writing the facts on which the objection is founded. Each party shall append to his notice an affidavit that he verily believes the matters and things set forth to be true. If new facts be discovered by either party after he has given notice as aforesaid, he may, within ten days after such discovery, give an additional notice to his adversary, with the specifications and affidavit prescribed in this section.

Sec. 7. County Court to Hear County and District Contests; Procedure; Review.—The county court shall hear and decide election contests initiated pursuant to the provisions of the preceding section. Subpoenas for witnesses for either party shall be issued by the clerk of the
county court, and served as in other cases, and the wit-
nesses shall be entitled to the same allowances and privi-
leges, and be subject to the same penalties, as witnesses
attending a circuit court in a civil suit. The notice of
contest shall be presented to the county court at its first
term after the same is delivered to the person whose elec-
tion is contested, and the same shall be docketed for trial
in such court. At the trial of such contest, the court shall
hear all such legal and proper evidence that may be
brought before it by either party, and may, if deemed
necessary, require the production of the poll books, cer-
tificates and ballots deposited with its clerk, and examine
the same. The hearing may be continued by the court
from time to time, if it be shown that justice and right
require it, but not beyond three months from the day of
election. At the final trial of such contest the court shall
declare the true result of such election, and cause the
same to be entered on the records of the court. When the
result of the election is declared, as aforesaid, a certified
copy of the order declaring such result shall, if required,
be delivered by the clerk of the court to the person de-
clared elected, if such be the result of the trial, and such
copy shall be received in all courts and places as legal
evidence of the result of the election therein declared.
Either the contestant or contestee shall have the right of
appeal to the circuit court of the county from the final
order or decision of the county court in such proceeding,
upon the filing of a bond with good personal security, by
the party desiring the appeal, to be approved by the county
court, in a sum deemed sufficient by such court, with con-
dition to the effect that the person proposing to appeal
will perform and satisfy any judgment which may be
rendered against him by the circuit court on such appeal.
But such appeal shall not be granted unless the party
desiring the appeal shall make application for such appeal,
and file such bond, within thirty days from the entering
of the final order in such proceeding; and the circuit court
may at any time require a new bond or increase the pen-
alty thereof when the court deems it necessary. When
such appeal is taken to the circuit court, as hereinbefore
provided, it shall be heard and determined upon the
original papers, evidence, depositions and records filed
before and considered by the county court, and the cir-
cuit court shall decide the contest upon the merits. From
the decision of the circuit court, an appeal shall lie to the
supreme court of appeals, as in other cases, but such appeal
shall be heard upon the original papers and copies of all
orders made, without requiring the same to be printed.

Sec. 8. Correction of Returns; Extent.—Though illegal
votes be received, or legal votes be rejected, at any place
of voting, the returns of the votes taken at such place shall
not be set aside for that cause, but it may be shown, by
proper evidence before the tribunal authorized by law
to hear and determine contested elections, for whom such
illegal votes or any of them were cast, or for whom the
legal votes which were rejected would have been given,
and the returns shall be corrected only to the extent that
it is so shown.

Sec. 9. Costs in Election Contests.—The cost of every
contested election shall include only the expenses of
serving notices, taking depositions and the allowances to
witnesses; and shall be noted at the foot of every deposi-
tion or set of depositions, by the person taking the same.
If the contestant fails in setting aside the election, there
shall be awarded against him the amount of such costs
incurred or expended by the person who was returned
or declared elected. Otherwise, each party shall pay his
own costs; unless it appears that the person returned or
declared elected was guilty of fraud or malpractice in the
election, or in procuring such return or declaration, in
which case costs shall be awarded against him in favor
of the contestant. Where costs are awarded in favor of
either party, the amount thereof shall be ascertained under
direction of the house joint session, or court, which decides
the case, and a certificate thereof, authenticated by the
signature of the presiding officer, shall be delivered to
the party in whose favor they are awarded, which cer-
tificate shall have the force of a judgment, and if such
costs be not paid within ten days after the date thereof,
the clerk of the circuit court, of the county in which the
party against whom the costs were awarded resides, may
issue execution on such certificate, upon its delivery to such clerk, in like manner as upon a judgment of the circuit court. But no person contesting the seat of another in the Legislature shall be entitled to pay or mileage if the contest fails.

**Article 8. Regulation and Control of Elections.**

Section 1. Provisions to regulate and control elections.

Section 2. Accounting for receipts and expenditures in elections.

Section 3. Committee treasurers; required to receive and disburse funds.

Section 4. Treasurers and financial agents; written designation requirements; "person" and "financial agent" defined.

Section 5. Detailed accounts and verified financial statements required; "contribution" defined.

Section 6. Financial statement forms; filing; disposition.

Section 7. Failure to file statement; penalty.

Section 8. Corporation contributions forbidden; penalties.

Section 9. Lawful and unlawful election expenses.

Section 10. Limitations on election expenses.

Section 11. Specific acts forbidden; penalties.

Section 12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

Section 13. Parties liable and subject to penalties.

**Section 1. Provisions to Regulate and Control Elections.**

Political campaign contributions, receipts and expenditures of money, advertising, influence and control of employees, and other economic, political and social control factors incident to primary, special and general elections shall be regulated and controlled by the provisions of this article and other applicable provisions of this chapter.

**Sec. 2. Accounting for Receipts and Expenditures in Elections.**—In all elections for nomination of candidates, for party committeemen, and for officers, except elections for officers in towns and cities and for magisterial and school district officers, records of receipts and expenditures for political purposes shall be kept by or on behalf of all candidates. All such receipts and expenditures shall be subject to regulation by the provisions of this article. Verified statements of such receipts and expenditures shall be made and filed as public records by all candidates and by their political agents, representatives, or any person acting for and on behalf of any candidate, and by the treasurers of all political party committees.

**Sec. 3. Committee Treasurers; Required to Receive and**
2 Disburse Funds.—Every political party committee shall appoint and retain a treasurer to receive, keep and disburse all sums of money which may be collected or received by such committee, or by any of its members, for election expenses, and, unless such treasurer is first appointed and thereafter retained, it shall be unlawful for any such committee or any of its members to collect, receive or disburse money for any such purposes. All moneys collected or received by any such committee, or by any of its members, for election expenses, shall be paid over to, and pass through the hands of, the treasurer, and shall be disbursed by him, and it shall be unlawful for any such committee, or any of its members, to disburse any money for election expenses unless such money shall be paid to, and disbursed by, the treasurer. The same person may be designated to act as treasurer for two or more political party committees.

Sec. 4. Treasurers and Financial Agents; Written Designation Requirements; “Person” and “Financial Agent” Defined.—No person shall act as the treasurer of any political party committee, or as financial agent for any candidate for nomination or election to any office to be filled by the voters of the entire state, delegates-at-large to a national convention, and candidates for president of the United States, unless a written statement designating him as such treasurer or financial agent shall be filed with the secretary of state, at least sixty days before the election at which he is to act. No person shall act as treasurer of any such committee or as financial agent for any candidate to be nominated or elected by the voters of any political division less than the entire state, and greater than a county, including delegates to national conventions, unless a written statement designating him as such treasurer or financial agent is filed with the clerk of the county court of each county within such political division at least sixty days before the election at which he is to act. No person shall act as treasurer of any such committee, or as financial agent for any candidate to be nominated or elected by the voters of a county or district therein, or as the treasurer or financial agent for a candidate for the nomination or election to any other office
not herein mentioned, unless a written statement designating him as such treasurer or financial agent shall be filed with the clerk of the county court at least sixty days before the election at which he is to act.

As used in this article:

The term “person” shall include an individual, partnership, committee, association, corporation, and any other organization or group of persons; and

The term “financial agent” shall include any person acting for and by himself, or any two or more natural persons acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party or principal at any election, or any proposition submitted to a vote at a public election.

Sec. 5. Detailed Accounts and Verified Financial Statements Required; “Contribution” Defined.—Every candidate, financial agent, person and association of persons, organization of any kind, including the treasurer, or equivalent officer of such association or organization, opposing or advocating the defeat or passage of any matter, thing or item to be voted upon, or touching upon or pertaining to the holding or the conduct of any election and the treasurer of every political party committee, shall keep detailed accounts of all money, or its equivalent, received by them, and of all expenditures and disbursements made, and liabilities incurred, by such candidate, agent, such person, association or organization or committee, for political purposes, or by any of the officers or members of such committee, or any person acting under its authority or on its behalf.

Not less than seven nor more than fifteen days before each primary or other election, and again within thirty days after each primary or other election, every candidate for public office, and every financial agent, person, the treasurer or equivalent officer of any association, or organization of any kind opposing or advocating the defeat or passage of any matter, thing or item to be voted upon or touching upon or pertaining to the holding or conduct of any election and the treasurer of every political party
committee, shall file with the officers hereinafter prescribed a detailed itemized statement subscribed and sworn to before an officer authorized to administer oaths, setting forth all financial transactions in connection with such primary or other election. Such statement shall show each and every sum of money or other thing of value contributed or advanced; the name of each person, firm, association or committee by whom it was contributed or advanced; the amount and purpose of every expenditure made or liability incurred, and the name of each person, firm, association or committee to whom such expenditure was made or liability incurred, with dates of each transaction. Any unexpended balance, remaining in the hands of any financial agent, or of the treasurer of any such committee at the time of making the statements herein provided for, shall be properly accounted for in said statement, and shall appear as a balance in the next following report of such agent or treasurer or his successor in office. Such sworn statements shall be filed with the secretary of state, by candidates for state and other offices to be nominated or elected by the voters of a political division greater than a county, and with the clerk of the county court, by candidates for offices to be nominated or elected by the voters of a county or district therein, and by all candidates for other offices not otherwise provided for.

The term "contribution," as used in this article, shall include a gift, subscription, loan, advance, or deposit of money, or anything of value given or offered in connection with political activity. It shall also include a contract, promise, or agreement, whether or not legally enforceable, to make a contribution.

Sec. 6. Financial Statement Forms; Filing; Disposition.
—Blank forms for all financial statements required under this article shall be prepared by the secretary of state, and copies thereof, together with a copy of this article, shall be furnished through the county clerk or otherwise, as the secretary of state may deem expedient, to all treasurers of political committees, to all political financial agents, and to all candidates for nomination or election to any office, upon the filing of a petition or announcement for nomination, and to all other persons required
by law to file such statements who shall apply therefor.
All statements filed in accordance with the provisions of
this article shall be received, indorsed and filed by the
secretary of state and county clerks, and shall be pre-
served for one year after the election to which they re-
late, after which time they may be destroyed, if not re-
quired to be further preserved by the order of any court.

Sec. 7. Failure to File Statement; Penalty.—Any can-
didate, financial agent, or treasurer of a political party
committee, who shall fail to file a sworn, itemized state-
ment as in this article provided, within the time required,
shall be guilty of a misdemeanor, and, upon conviction,
shall be fined not less than fifty dollars, or imprisoned
in the county jail for not more than one year, or both, in
the discretion of the court. Forty days after any such
primary or other election, the secretary of state, or county
clerk, as the case may be, shall give notice of any failure
to file such statement by any candidate, financial agent
or treasurer of such committee, to the prosecuting att-
torney of the county where such delinquent resides. No can-
didate nominated at a primary election, who has failed to
make a sworn statement as required by this article, shall
have his name placed on the official ballot for the ensu-
ing election, unless there has been filed by or on behalf
of such candidate, or by his financial agent, if any, the
financial statement relating to nominations required by
this article. It shall be unlawful to issue a commission
or certificate of election, or to administer the oath of of-

Sec. 8. Corporation Contributions Forbidden; Penalties.
—No officer of any corporation, or agent or person on be-
half of such corporation, whether incorporated under the
laws of this or any other state, or foreign country, shall
pay, give or lend, or authorize to be paid, given or lent,
any money or other thing of value belonging to such
corporation, to any candidate, financial agent or political
committee or other person, for the payment of any pri-
mary or other election expenses whatever. No person
shall solicit or receive such payment, contribution or
other thing from any corporation, officer or agent there-
of, or other person acting on behalf of such corporation.
Any person or corporation violating any provision of this
section shall be guilty of a misdemeanor, and, on convic-
tion, shall be fined not more than five thousand dollars.

Sec. 9. Lawful and Unlawful Election Expenses.—No
candidate, financial agent, or treasurer of a political party
committee, shall pay, give or lend, either directly or in-
directly, any money or other thing of value for any elec-
tion expenses, except for the following purposes:
(a) For rent, maintenance and furnishing of offices to
be used as political headquarters and for the payment of
necessary clerks, stenographers, typists, janitors and mes-
sengers actually employed therein;
(b) For printing and distributing books, pamphlets,
circulars and other printed matter and radio and tele-
vision broadcasting and painting, printing and posting
signs, banners and other advertisements, all relating to
political issues and candidates;
(c) For renting and decorating halls for public meet-
ings and political conventions; for advertising public
meetings, and for the payment of traveling expenses of
speakers and musicians at such meetings;
(d) For the necessary traveling and hotel expenses of
candidates, political agents and committees, and for sta-
tionery, postage, telegrams, telephone, express, freight
and public messenger service;
(e) For preparing, circulating and filing petitions for
nomination of candidates;
(f) For examining the lists of registered voters, secur-
ing copies thereof, investigating the right to vote of the
persons listed therein, and conducting proceedings to pre-
vent unlawful registration or voting;
(g) For conveying voters to and from the polls; and
(h) For securing publication in newspapers and by
radio and television broadcasting of documents, articles, speeches, arguments and any information relating to any political issue, candidate, or question or proposition, submitted to a vote.

Every liability incurred and payment made shall be at a rate and for a total amount which is proper and reasonable and fairly commensurate with the services rendered.

Sec. 10. Limitations on Election Expenses.—No payment shall be made and no liability shall be incurred by or on behalf of any candidate for office in this state to aid in securing his nomination or election, or both, which shall in the aggregate exceed the amounts herein provided for, that is to say: Candidates for United States senate or any state office, the sum of seventy-five dollars for each county in the state, for the primary election, and a like amount for the general election; candidates for members of the Legislature, the sum of one hundred and twenty-five dollars for each county in which such candidate is voted for, for the primary election, and a like amount for the general election; for members of the United States house of representatives, the sum of seventy-five dollars for each county in the district for the primary election, and a like amount for the general election; for any county office, a sum not to exceed two hundred dollars in each county, for the primary election, and a like amount for the general election; and for any other office, not hereinbefore mentioned, a sum not to exceed fifty dollars in the political division in which such person is a candidate, for the primary election, and a like amount for the general election. Any candidate may delegate to a financial agent or a political party committee, in a writing duly subscribed by him, the expenditure of any portion of the total expenses authorized to be incurred by him, or on his behalf; but the aggregate of all expenses made and incurred by such candidate, by any political agent on his behalf and by any such committee on his behalf, shall not exceed the amounts hereinbefore provided. No payments shall be made and no liability shall be incurred by any financial agent or political party committee which shall exceed in the aggregate the sum of the
34 amounts theretofore delegated to such agent or committee
35 by the candidate, in writing, as herein provided. There
36 shall not be included in arriving at the several amounts
37 which may be expended, or liability incurred for, items
38 mentioned in subdivisions (b) to (h), both inclusive, of
39 the next preceding section.
40 Any person violating the provisions of this section shall,
41 upon conviction, be disqualified from holding any public
42 office or employment during a period of five years subse-
43 quent to the date of conviction. If elected to occupy any
44 public office or employment, such person shall immedi-
45ately, upon conviction, be deemed to have vacated such
46 office or to have ceased such employment.

Sec. 11. Specific Acts Forbidden; Penalties.—(a) Any
2 person, other than a financial agent or a member of a
3 political party committee duly appointed and designated
4 as provided in this article, who shall solicit from any
5 candidate for nomination or election to any public office,
6 any money, gift, contribution, emolument, or other valu-
7 able thing, for the support, assistance, benefit or expenses
8 of any person or persons, club, company, organization,
9 religious body, society, association, or for any other pur-
10 poses except as herein provided, or for the expenses of
11 any primary or other election campaign; or
12 (b) Any person who shall demand, solicit, ask or in-
13 vite any candidate to make any contribution or incur
14 any obligation to any religious, charitable or fraternal
15 cause, or organization other than political committees
16 duly designated under the provisions of this article, or
17 to buy tickets to any entertainment or ball, or to sub-
18scribe or pay for space in any book, program, periodical,
19 newspaper or other publication; or any candidate who
20 shall make or promise any such payment or contribution
21 with the apparent hope or intent to influence the result
22 of any election, but this paragraph shall not apply to the
23 solicitation of any business advertisements in a periodi-
24 cal in which such candidate regularly advertised prior
25 to his candidacy, nor to ordinary business advertising,
26 nor to the regular and normal payments to any religious,
27 charitable or other organization to which he may have
been a contributor for more than six months before his candidacy; or

(c) Any person who shall, directly or indirectly, by himself, or by any other person on his behalf, make use of, or threaten to make use of, any force, violence or restraint, or inflict, or threaten to inflict, any damage, harm or loss, upon or against any person, or by any other means attempt to intimidate or exert any undue influence, in order to induce such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who shall, by abduction, duress or any fraudulent device or contrivance, impede or prevent the free exercise of the suffrage by any elector, or shall thereby compel, induce or prevail upon any elector either to vote or refrain from voting for or against any particular candidate or measure; or

(d) Any person who, being an employer, or acting for or on behalf of any employer, shall give any notice or information to his employees, containing any threat, either express or implied, intended or calculated to influence the political view or actions of the workmen or employees; or

(e) Any person who shall, knowingly, make or publish, or cause to be made or published, any false statement in regard to any candidate, which statement is intended or tends to affect any voting at any election whatever; or

(f) Any person who shall pay any owner, publisher, editor or employee, or any newspaper or other periodical, to advocate or oppose editorially, any candidate for nomination or election, or any political party, or any measure to be submitted to the vote of the people; or any owner, publisher, editor, or employee, who shall solicit or accept such payment:

Shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than ten thousand dollars, or confined in jail for not more than one year, or, in the discretion of the court, shall be subject to both such fine and imprisonment.

Sec. 12. Additional Acts Forbidden; Circulation of Written Matter; Newspaper Advertising; Solicitation of
Contributions; Intimidation and Coercion of Employees; Promise of Employment or Other Benefits; Limitations on Contributions; Public Contractors; Penalty.—(a) No person shall publish, issue or circulate, or cause to be published, issued or circulated, any anonymous letter, circular, placard, or other publication tending to influence voting at any election;

(b) No owner, publisher, editor, or employee of a newspaper or other periodical shall insert, either in its advertising or reading columns, any matter, paid for or to be paid for, which tends to influence the voting at any election whatever, unless distinctly designating it as a paid advertisement and stating the name of the person authorizing its publication and the candidate in whose behalf it is published;

(c) No person shall, in any room or building occupied for the discharge of official duties by any officer or employee of the state or a political subdivision thereof, solicit orally or by written communication delivered therein, or in any other manner, any contribution of money or other thing of value for any party or political purpose whatever, from any postmaster or other officer or employee of the federal government, or officer or employee of the state, or a political subdivision thereof. No officer, agent, clerk, or employee of the federal government, or of this state, or any political subdivision thereof, who may have charge or control of any building, office or room, occupied for any official purpose, shall knowingly permit any person to enter the same for the purpose of therein soliciting or receiving any political assessments from, or delivering or giving written solicitations for, or any notice of, any political assessments to, any officer or employee of the state, or a political subdivision thereof;

(d) No person entering into any contract with the state or its subdivisions, or any department or agency thereof, either for rendition of personal services or furnishing any material, supplies or equipment or selling any land or building to the state, or its subdivisions, or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land or building is to be made
in whole or in part from public funds shall, during the period of negotiation for or performance under such contract or furnishing of materials, supplies, equipment, land or buildings, directly or indirectly make any contribution to any political party, committee or candidate for public office or to any person for political purposes or use; nor shall any person or firm solicit any contributions for any such purposes during any such period;

(e) No person shall, directly or indirectly, promise any employment, position, work, compensation, or other benefit provided for, or made possible, in whole or in part by act of the Legislature, to any person as consideration, favor, or reward for any political activity for the support of or opposition to any candidate, or any political party in any election;

(f) No person shall, directly or indirectly, make any contribution in excess of the value of five thousand dollars in connection with any campaign for nomination or election to or on behalf of any elective office in the state or any of its subdivisions, or in connection with or on behalf of any committee or other organization or person engaged in furthering, advancing or advocating the nomination or election of any candidate for any such office; and

(g) No person shall solicit any contribution from any nonelective salaried employee of the state government or of any of its subdivisions or coerce or intimidate any such employee into making such contribution. No person shall coerce or intimidate any nonsalaried employee of the state government or of any of its subdivisions into engaging in any form of political activity. The provisions hereof shall not be construed to prevent any such employee from making such a contribution or from engaging in political activity voluntarily, without coercion, intimidation or solicitation.

Any person violating any provision of this section shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than one thousand dollars, or confined in jail for not more than one year, or, in the discretion of the court, be subject to both such fine and imprisonment.
Sec. 13. Parties Liable and Subject to Penalties.—In all cases of violation of the provisions of this article by any partnership, committee, association, corporation, or other organization or group of persons, the officers, directors, or managing or controlling heads thereof, who knowingly and willingly participate in such violation, shall be subject to the penalties and punishments provided herein.

Article 9. Offenses and Penalties.

Section 1. False or fraudulent returns; tampering with, destroying or misdelivering ballots, records, etc.; forgeries; aiding, etc., in offense; penalties.

Section 2. Unlawful printing, possession, or delivery of ballots; penalties.

Section 3. False swearing; penalties.

Section 4. Commissioner’s failure to get supplies; penalties.

Section 5. Destruction or removal of election supplies and equipment; attempts; penalties.

Section 6. Unauthorized presence in election room; sixty-foot limit; penalties.

Section 7. Wrongful refusal or allowance of votes; malicious or frivolous challenges; penalties.

Section 8. Distinguishing marks on ballots; conspiracies; penalties.

Section 9. Unlawful acts at polling places; penalties.

Section 10. Disorder at polls; prevention; failure to assist in preventing disorder; penalties.

Section 11. Failure to make returns; disclosing results; penalties.

Section 12. Candidate influence and bribes; penalties.

Section 13. Unlawful influence acts; penalties.

Section 14. Unlawful acts by corporations; penalties.

Section 15. Unlawful acts by employers; penalties.

Section 16. Bribe and influence by voters; penalties.

Section 17. Illegal voting; deceiving voters; penalties.

Section 18. Unlawful voting in primary elections; penalties.

Section 19. Violations concerning absent voters’ ballots.

Section 20. Obstructing employees’ freedom to vote; penalties.

Section 21. Failure to destroy unused ballots; penalty.

Section 22. Wagering or betting on elections; penalties.

Section 23. Punishment where penalty not prescribed; failure to perform duty not specifically made an offense.

Section 24. Limitations on prosecutions.

Section 1. False or Fraudulent Returns; Tampering with, Destroying or Misdelivering Ballots, Records, etc.; Forgeries; Aiding, etc., in Offense; Penalties.—Every person named and identified in this section, who shall violate any of the provisions of the election laws as herein specified, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in the penitentiary for not less than one nor more than ten years:

(a) Any commissioner of election or poll clerk who shall knowingly make or cause to be made, or conspire
with others to make, a false return of the result of the
votes cast for any candidate at any precinct in an elec-
tion held pursuant to law; or
(b) Any commissioner of election receiving the ballot
of a voter to be deposited in the ballot box at any election
precinct, who shall put another ballot in the box instead
of the one received by him; or
(c) Any commissioner of election or poll clerk, who
knowingly shall count and string a ballot not taken from
the ballot box, in lieu of one taken, or which should have
been taken from such ballot box; or
(d) Any commissioner of a county court, whether act-
ing as such or ex officio as a member of a board of can-
vassers or otherwise, clerk of a county court, or other
person, who shall, except as authorized by law, abstract
any ballot from any package of ballots voted, sealed or
returned from any election precinct, either before or
after they are filed with the clerk of the county court, or
who shall in any manner change any such ballot from
what it was when voted by the voter, or who shall put
another ballot in such package in the place of the one so
abstracted therefrom; or
(e) Any commissioner of a county court, whether act-
ing as such commissioner or ex officio as a member of a
board of canvassers, or otherwise, who shall knowingly
make and enter of record, or in any way aid, counsel, or
advise the same to be done, or permit the same to be done
without objection on his part, any false or fraudulent
statement of the result of any election held within the
county; or
(f) Any person who shall falsely make, or fraudu-
ently deface, or fraudulently destroy, any certificate of
nomination, or any part thereof, or file any certificate of
nomination, knowing the same, or any part thereof, to be
falsely made, or suppress any certificate of nomination
which has been duly filed, or any part thereof; or erase,
deface, or change in any manner, any election record, or
any ballot, poll book, tally sheet or certificate of election,
deposited with either of the clerks of the county or cir-
cuit courts; or conspire with another to do any of said
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acts; or induce or attempt to induce any other persons to
do any of said acts; or

(g) Any person who shall aid, assist, counsel or ad-
vice in the commission of any of the offenses above speci-
ified, whether or not said acts, or any of them be commit-
ted or attempted to be committed; or

(h) Any person, who, without the assent of another,
shall sign the name of such other person to any certificate,
affidavit, ballot, report, statement or writing, required
under any provision of this chapter, with intent to mis-
lead and deceive; or who shall use or employ any certifi-
cate, affidavit, ballot, report, statement or writing to
which the name of a person has been signed without the
authority of such person, knowing that such name has
been so signed with intent to mislead or deceive; or

(i) Any clerk of a court, poll clerk, member of the
board of ballot commissioners, commissioner of election,
or messenger intrusted with the custody of the ballots,
who shall open unlawfully any of the packages in which
the ballots are contained, or permit any of them to be
opened, or destroy any of such ballots, or permit them to
be destroyed, or give, or deliver any such packages or bal-
lots to any person not lawfully entitled to receive them, as
in this chapter provided, or conspire to procure, or in any
way aid, abet, or connive at any robbery, loss or unlawful
destruction of any such ballots or packages; or

(j) Any person not duly authorized by law who shall,
during the progress of any election in this state, or after
the closing of the polls and before the ballots are counted
and the results ascertained, or within twelve months
thereafter, open without breaking, or break open or vio-
late, the seals or locks of any ballot box, paper, envelope
or bag, in which ballots have been deposited at or after
such election, or who shall obtain possession of such bal-
lot box, paper, envelope or bag containing such ballots,
and cancel, withhold, or destroy such ballots, or who shall
fraudulently or forcibly add to or diminish the number
of ballots legally deposited therein, or who shall fraudu-
ently make any erasure or alteration of any kind, upon
any tally sheet, poll book, list of voters, or election re-
turns, deposited therein.
Sec. 2. Unlawful Printing, Possession, or Delivery of Ballots; Penalties.—No one, except the person employed and authorized by the ballot commissioners to do so, shall print any ballot for any election. No person engaged or employed in printing such ballots shall deliver any ballot to any person except a member of the board of ballot commissioners, or knowingly permit any other person to obtain possession of any ballot; or print, or cause to be printed, any ballot in any other form, or with the names of any other persons thereon, or with the names thereon spelled or arranged in any other manner than that prescribed by the ballot commissioners. No person shall print, have in his possession, or deliver, any imitation ballot having a similitude or likeness to the official ballot, and which would be calculated to deceive: Provided, however, That nothing herein contained shall prohibit any person from printing or having in his possession a sample ballot printed on paper of a color different from the official ballot, and not calculated to deceive. Any person violating any provision of this section shall be guilty of a felony, and, on conviction thereof, shall be punished by imprisonment in the state penitentiary for not less than one nor more than ten years.

Any person who shall unlawfully take or remove, with or without the consent of the lawful custodian thereof, any ballot from the place at which such ballots are lawfully kept for the time being; or unlawfully remove or attempt to remove any ballot from the election room; or have in his possession outside of the election room during the election any ballot, shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years, or, in the discretion of the court, be confined in jail for not more than one year.

Sec. 3. False Swearing; Penalties.—If any election official, or other person, making any affidavit required under any provision of this chapter, shall therein knowingly swear falsely, or if any person shall counsel, advise, aid or abet another in the commission of false swearing, he shall be guilty of a misdemeanor, and, on conviction therefor shall be fined not more than one thousand dollars and
8 imprisoned in the county jail for a period of not more
9 than one year.

10 If any person making any declaration required under any
11 provision of this chapter shall knowingly make a false
12 statement or representation therein, or if any person shall
13 counsel, advise, aid or abet another to make such a decl-
14 aration containing any false statement or representation,
15 any such person shall be deemed to be guilty of false
16 swearing although no oath was administered, and such
17 offense is hereby declared to be a misdemeanor. Upon
18 conviction of such offense, any such person shall be fined
19 not more than one thousand dollars and imprisoned in
20 the county jail for a period of not more than one year.

Sec. 4. Commissioner's Failure to Get Supplies; Penalties.—Any commissioner of election designated to call for
2 and deliver election supplies as provided in article one of
3 this chapter who shall wilfully or negligently fail to ap-
4 pear at the offices of the clerks of the circuit and county
5 courts of his county and procure and deliver such sup-
6 plies, or who shall wilfully or negligently fail or refuse
7 to return such supplies, as provided in articles five and six
8 of this chapter, shall be guilty of a misdemeanor, and, on
9 conviction thereof, shall be fined not less than ten nor
10 more than one hundred dollars.

Sec. 5. Destruction or Removal of Election Supplies
1 and Equipment; Attempts; Penalties.—If any person shall,
2 during the election, remove or destroy any of the supplies
3 or other conveniences placed in the booths or compart-
4 ments as aforesaid, or delivered to the voter for the pur-
5 pose of enabling the voter to prepare his ballot or shall,
6 during an election, remove, tear down or deface, the cards
7 printed for the instruction of the voters, or shall, during
8 an election, destroy or remove any booths or other con-
9 venience provided for such election, or shall induce or at-
10 tempt to induce any person to commit any of such acts,
11 whether or not any of such acts be committed, or attempt-
12 ed to be committed, then such person shall be guilty of a
13 misdemeanor, and, on conviction thereof, shall be fined
14 not more than one thousand dollars or confined in the

Sec. 6. Unauthorized Presence in Election Room; Sixty-Foot Limit; Penalties.—If any person, not herein authorized so to do, shall enter or attempt to enter the election room, except upon a lawful errand and for a proper purpose, or shall remain within sixty feet of the polling place, contrary to the provisions of this chapter, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than five hundred dollars, or confined in the county jail for not more than thirty days.

Sec. 7. Wrongful Refusal or Allowance of Votes; Malicious or Frivolous Challenges; Penalties.—Any election officer who refuses the vote of a duly registered and qualified voter, whom he knows is entitled to vote or who accepts the vote of a person whom he knows to be not lawfully registered, without challenging such persons, shall be guilty of a misdemeanor, and, upon conviction, be fined not more than one thousand dollars or confined in the county jail for not more than one year, or both, at the discretion of the court.

Any person who shall maliciously or frivolously, and without probable cause, challenge the right of any person to vote, shall be guilty of a misdemeanor, and, upon conviction, be fined not more than one hundred dollars or confined in the county jail for not more than ninety days, or both, at the discretion of the court.

Sec. 8. Distinguishing Marks on Ballots; Conspiracies; Penalties.—If any person shall induce, or attempt to induce, any voter to write, paste or otherwise place on his ballot the name of any person, or any sign or device of any kind, as a distinguishing mark by which to indicate to any other person how such voter voted, or shall enter into or attempt to form any agreement or conspiracy with any other person to induce or attempt to induce a voter to so place a distinguishing name or mark on his ballot, whether or not such act be committed or attempted to be committed, such person so offending shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than one thousand dollars, or be imprisoned in
the county jail for not more than one year, or both, in
the discretion of the court.

Sec. 9. Unlawful Acts at Polling Places; Penalties.—
No officer of election shall disclose to any person the name
of any candidate for whom a voter has voted. No officer
of election shall do any electioneering on election day.
No person shall do any electioneering on election day
within any polling place, or within sixty feet of any poll-
ing place. No person shall apply for or receive any ballot
in any polling place, other than that in which he is en-
titled to vote, nor shall any person examine a ballot which
any voter has prepared for voting, or solicit the voter to
show the same, nor ask, nor make any arrangement, di-
rectly or indirectly, with any voter, to vote an open bal-
lot. No person, except a commissioner of election, shall
receive from any voter a ballot prepared by him for vot-
ing. No voter shall receive a ballot from any person other
than one of the poll clerks; nor shall any person other
than a poll clerk deliver a ballot to a commissioner of
election to be voted by such commissioner. No voter
shall deliver any ballot to a commissioner of election to
be voted, except the one he receives from the poll clerk.
No voter shall place any mark upon his ballot, or suffer
or permit any other person to do so, by which it may be
afterward identified as the ballot voted by him. Who-
ever shall violate any provision of this section shall be
guilty of a misdemeanor, and, on conviction thereof, shall
be fined not more than one thousand dollars, or confined
in jail for not more than one year, or both, in the discre-
tion of the court.

Sec. 10. Disorder at Polls; Prevention; Failure to Assist
in Preventing Disorder; Penalties.—Any person who shall,
by force, menace, fraud or intimidation, prevent or at-
tempt to prevent any officer whose duty it is by law to as-
ist in holding an election, or in counting the votes cast
thereat, and certifying and returning the result thereof,
from discharging his duties according to law; or who shall,
by violence, threatening gestures, speeches, force, menace
or intimidation, prevent or attempt to prevent an election
being held; or who shall in any manner obstruct or attempt
to obstruct the holding of an election, or who shall, by any
manner of force, fraud, menace or intimidation, prevent or
attempt to prevent any voter from attending any election,
or from freely exercising his right of suffrage at any elec-
tion at which he is entitled to vote, shall be guilty of a mis-
demeanor, and, upon conviction, fined not more than one
thousand dollars, or confined in the county jail for not
more than one year, or both, in the discretion of the court.

Any person who, being thereto commanded by the com-
missioners of election, or either of them, shall fail or re-
fuse to assist to the utmost of his power, in whatever may
be necessary or proper to prevent intimidation, disorder
or violence at the polls, shall be guilty of a misdemeanor,
and, upon conviction thereof, shall be fined not less than
ten nor more than one hundred dollars.

Sec. 11. Failure to Make Returns; Disclosing Results;
Penalties.—Any election officer who shall wilfully fail,
neglect or refuse to prepare and return certificates of the
result of the election in the manner provided, within
twelve hours after the completion of the count, tabulation
and declaration of the results, shall be guilty of a misde-
meanor, and, upon conviction, fined not more than one
thousand dollars, or confined in the county jail for not
more than one year, or both, in the discretion of the court.

Sec. 12. Candidate Influence and Bribes; Penalties.—
Whoever, being a candidate for any office, loans or gives,
directly or indirectly, or offers or promises to loan, or
give, any money, or other thing of value, to any elector,
for the purpose of influencing or retaining the vote of
such elector, or inducing such elector to work or labor for
the election of such candidate, or to refrain from work-
ing or laboring for the election of any other candidate;
or to any person to secure or to retain the influence or
vote of such elector, in his behalf as such candidate, or
to be used by such person in any way to influence the
vote of any elector, or of electors generally, for himself
or any candidate or ticket, shall be guilty of a misde-
meanor, and, on conviction thereof, shall be fined not more
than one thousand dollars, or confined in the county
jail for not more than one year, or both, in the discretion
of the court.
Sec. 13. Unlawful Influence Acts; Penalties.—Any person who shall hire, or otherwise employ for consideration, another to work at the polls on election day, for the election of any candidate to be voted for at such election, or shall, directly or indirectly, by himself or by any other person on his behalf, give, lend or agree to give or lend, or offer, promise, or promise to procure, any money or valuable consideration, or any place of employment, public or private, to or for any voter, or to or for any person on behalf of any voter, or to or for any person in order to induce any voter to vote or refrain from voting, or to vote for any particular person or candidate or object, or to refrain therefrom; or shall do any such act as aforesaid on account of such voter having voted or refrained from voting at an election, or having voted for any particular person or candidate or object, or refraining therefrom; or shall advance, pay or contribute, or cause to be paid or contributed, any money or other thing of value to or for the use of any other person with the intent that such money or other thing of value, or any part thereof, shall be expended in bribery at any primary or other election; shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or be confined in jail for not more than one year, or both, in the discretion of the court.

Sec. 14. Unlawful Acts by Corporations; Penalties.—Any corporation which shall, by its officers, agents or otherwise, offer, give or use, or cause to be offered, given or used, or place or cause to be placed, in the possession, under the control or at the disposal of another, to be offered, given or used, directly or indirectly, money or other thing of value, for the purpose of influencing any voter or voters to vote for a particular candidate, or in any particular manner, or upon any particular side of any question to be decided at any such election, or to influence the result of any such election, it shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than five thousand nor more than twenty thousand dollars for every such offense, at the discretion of the jury.

Sec. 15. Unlawful Acts by Employers; Penalties.—Any
employer or agent of any employer or corporation, who
prints or authorizes to be printed upon any pay envelope
or who distributes directly or indirectly, or gives directly
to any employee any statement intended or calculated
to influence the political action of his employees for any
candidate for public office, or posts or exhibits in the es-
establishment, any posters, placards, or handbills, or de-
delivers verbally any message to any such employees, con-
taining any threat, notice or information that if any such
candidate is elected or defeated, work in the establish-
ment will cease, in whole or in part, or other threats ex-
pressed or implied, intended to influence the political
opinions or votes of his employees, shall be guilty of cor-
rupt practices, and, upon conviction, shall be fined not less
than one thousand dollars nor more than twenty thou-
sand dollars or be imprisoned in jail not more than one
year, or both.

Sec. 16. Bribes and Influence by Voters; Penalties.—Any
voter who shall, before or during any election, directly or
indirectly, by himself, or by any other person on his be-
half, solicit, demand, receive, agree or contract for any
money, gift, loan, or valuable consideration, office, place
of employment, or solicit any indorsement on a note or
other paper, public or private, for himself or for any
other person, for voting or agreeing to vote, or for voting
for any person or candidate or object, or agreeing so to vote,
or from refraining or agreeing to refrain from voting at
any election; or any person who shall, after any election,
directly or indirectly, by himself, or by any other person
on his behalf, solicit, demand or receive any money or
valuable consideration on account of any person having
voted or refrained from voting, or having induced any
other person to vote or refrain from voting at any elec-
tion, shall be guilty of a misdemeanor, and, on conviction,
thereof, shall be fined not more than one thousand dol-
ars, or confined in jail for not more than one year, or
both, in the discretion of the court.

Sec. 17. Illegal Voting; Deceiving Voters; Penalties.—
If any person knowingly votes when not legally entitled;
or votes more than once in the same election; or know-
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ingly votes or attempts to vote more than one ballot for the same office, or on the same question; or procures or assists in procuring an illegal vote to be admitted, or received, at an election, knowing the same to be illegal; or a legal vote to be rejected, knowing the same to be legal; or, with intent to deceive, alters the ballot of a voter by marking out the name of any person for whom such voter desires to vote; or, with like intent, writes the name of any person on such ballot other than those directed by the voter; or with like intent, makes any alteration thereof, whether such ballot be voted or not; or defrauds any voter at any election, by deceiving and causing him to vote for a different person for any office than he intended or desired to vote for, he shall be guilty of a misdemeanor, and, on conviction thereof, shall for each offense be fined not more than one thousand dollars or confined in the county jail for not more than one year, or both, in the discretion of the court.

Sec. 18. Unlawful Voting in Primary Elections; Penalties.—Any person voting, in any primary election, any ticket of a party other than that of which he is registered as a member, and any election officer receiving the vote of any such person, knowing, or having reason to believe, that such voter is not a member of the party the ticket of which he is voting; or who, having signed or joined in any petition or certificate nominating any candidate for office, shall, at the primary election to be held to nominate candidates for the same office, vote at such primary election; shall in each instance be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than one thousand dollars, or be confined in the county jail for not more than one year, or both, in the discretion of the court.

Sec. 19. Violations Concerning Absent Voters’ Ballots; Penalties.—Any person who, having procured an absent voter’s official ballot or ballots, shall wilfully neglect or refuse to return the same as provided in article three of this chapter, or who shall otherwise wilfully violate any of the provisions of said article three of this chapter, shall be guilty of a misdemeanor, and, on conviction thereof,
shall be fined not more than two hundred and fifty dollars, or confined in the county jail for not more than three months. If the clerk of the circuit court of any county, or any member of the board of ballot commissioners, or any member of the board of canvassers shall refuse or neglect to perform any of the duties required of him by any of the provisions of articles three, five and six of this chapter relating to voting by absentees or shall disclose to any other person or persons how any absent voter voted, he shall, in each instance, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars, or confined in the county jail for not more than six months.

Sec. 20. Obstructing Employees' Freedom to Vote; Penalties.—Any corporation violating any provision of section forty-two of article one of this chapter or preventing or attempting to prevent any voter in its employ from attending any election, or from freely exercising his right of suffrage, at any election, at which he is entitled to vote, by any threat, direct or indirect, express or implied, to discharge such voter or deprive him of his employment, or shall discharge such voter or deprive him of his employment because of any vote he may cast, or refuse to cast, at any election at which he is entitled to vote, under the provisions of this chapter, shall, in each instance, be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than one thousand dollars. Any employer, other than a corporation, whether an individual or member of an association or partnership, and any officer, agent or manager of any corporation violating any provision of this section or of section forty-two of article one of this chapter shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding five hundred dollars or imprisoned in the county jail for a period not exceeding six months, or, in the discretion of the court, be subject to both such fine and imprisonment.

Sec. 21. Failure to Destroy Unused Ballots; Penalty.—For failure to destroy the ballots left over after supplying the polls, as provided in article one of this chapter, each member of the board of ballot commissioners shall be
5 guilty of a misdemeanor, and, upon conviction thereof,
6 shall be fined not less than fifty nor more than one hun-
7 dred dollars.

Sec. 22. Wagering or Betting on Elections; Penalties.—
2 It shall be unlawful to bet or wager money or other thing
3 of value on any election held in this state. Any person
4 violating the provisions of this section shall be guilty of
5 a misdemeanor, and, upon conviction thereof, he shall
6 forfeit the value of the money or thing so bet or wagered
7 and shall be fined not more than fifty dollars.

Sec. 23. Punishment Where Penalty Not Prescribed;
2 Failure to Perform Duty Not Specifically Made an Of-
3 fense.—Any person who shall commit any act made an
4 offense by any provision of this chapter, for which no
5 penalty or punishment is prescribed by any other pro-
6 vision contained therein, or any person who shall fail to
7 perform any duty prescribed therein which has not been
8 specifically made an offense, shall be guilty of a misde-
9 meanor, and, upon conviction thereof, shall be fined not
10 more than one thousand dollars, or, in the discretion of
11 the court, be confined in jail for not more than one year.

Sec. 24. Limitations on Prosecutions.—No person shall
2 be prosecuted for any crime or offense under any pro-
3 vision of this chapter, unless upon an indictment found
4 and presentment made within one year after the date of
5 the commission of the crime or offense.

Article 10. Filling Vacancies.

Section 1. Elections to Fill Vacancies in Offices.—Elec-
2 tions to fill vacancies shall be for the unexpired term,
3 and shall be held at the same places, and superintended,
4 conducted and returned, and the result ascertained, cer-
5 tified and declared, in the same manner, and by the same
6 officers, as in general elections. The persons elected,
having first duly qualified, shall enter upon the duties of their respective offices.

Sec. 2. Vacancy in Office of Governor.—In case of the death, conviction or impeachment, failure to qualify, resignation or other disability of the governor, the president of the senate shall act as governor until the vacancy is filled or the disability removed; and if the president of the senate, for any of the above named causes, shall be or become incapable of performing the duties of governor, the same shall devolve upon the speaker of the house of delegates; and in all other cases where there is no one to act as governor, one shall be chosen by the joint vote of the Legislature. Whenever a vacancy shall occur in the office of governor before the first three years of the term shall have expired, a new election for governor shall take place to fill the vacancy. If the vacancy shall occur more than thirty days next preceding a general election, the vacancy shall be filled at such election and the acting governor for the time being shall issue a proclamation accordingly, which shall be published once each week for four successive weeks prior to such election in one newspaper, in each county, of each of the two political parties which polled the highest and the second highest number of votes at the preceding general election in the state, published and having the largest circulation in such county. But if it shall occur less than thirty days next preceding such general election, and more than one year before the expiration of the term, such acting governor shall issue a proclamation, fixing a time for a special election to fill such vacancy, which shall be published as hereinbefore provided.

If the vacancy is to be filled at a general election and shall occur before the primary election to nominate candidates to be voted for at such general election, candidates to fill the vacancy shall be nominated at such primary election in accordance with the time requirements and the provisions and procedures prescribed in article five of this chapter. When nominations to fill such vacancy cannot be so accomplished at such primary election, and in all cases wherein the vacancy is to be filled at a special
election, candidates to be voted for at such general or special elections shall be nominated by a state convention to be called, convened and held under the resolutions, rules and regulations of the political party executive committees of the state. The laws prescribing the manner of calling, constituting and holding conventions to nominate candidates for presidential electors shall, in so far as applicable, govern conventions to nominate candidates to fill any vacancy in any office to be filled by the voters of the state as a whole, except that, in lieu of the magisterial district conventions in the several counties, the county executive committee shall call and convene a county convention at the county seat with delegates thereto apportioned to and representative of the several magisterial districts of the county as provided in section twenty-one of article five of this chapter. The county convention shall proceed to select the county's prescribed number of state convention delegates from the several magisterial districts thereof and the chairman and secretary of the convention shall promptly certify the names and addresses of the persons so selected as delegates to the state convention to the chairman of the state executive committee of the political party.

Sec. 3. State Officials, United States Senator and Judge Vacancies.—Any vacancy occurring in the office of secretary of state, auditor, treasurer, attorney general, commissioner of agriculture, United States senator, judge of the supreme court of appeals, or in any office created or made elective, to be filled by the voters of the entire state, or judge of a circuit court, a common pleas, intermediate, criminal or other inferior court, shall be filled by the governor of the state by appointment. If the unexpired term of a judge of the supreme court of appeals, or a judge of the circuit court, a common pleas, intermediate, criminal or other inferior court, be for less than two years; or if the unexpired term of any other office named in this section be for a period of less than two years and six months, the appointment to fill the vacancy shall be for the unexpired term. If the unexpired term of any office be for a longer period than above specified, the ap-
pointment shall be until the next general election and
until the election and qualification of a successor to the
person appointed, at which election the vacancy shall be
filled by election for the unexpired term. Proclamation
of any election to fill an unexpired term shall be made by
the governor of the state, and, in the case of an office to
be filled by the voters of the entire state, shall be published
once a week for four successive weeks prior to the elec-
tion in at least one newspaper of general circulation in
each county in the state, of each of the two political
parties which, at the last general election in the state,
cast the highest and second highest number of votes. If
the election be to fill a vacancy in the office of judge of a
circuit court, the proclamation shall be published for a
like period in the two leading newspapers of opposite
party politics, having the largest and second largest cir-
culation in each county in the judicial circuit. If the
election be to fill a vacancy in the office of judge of a
common pleas, intermediate, criminal or other inferior
court, the proclamation shall be published for a like period
in the two leading newspapers of opposite party politics,
having the largest and second largest circulation in the
county. Candidates to fill any vacancy in any office named
in this section shall be nominated in the manner pro-
vided in this article for nominating candidates to fill a
vacancy in the office of governor, to be voted for at a
general election, but, in selecting candidates for the office
of judge to serve in a single county, the county executive
committee of the county shall perform the duties relating
thereto, and, in selecting candidates for the office of
judge of a circuit court in circuits embracing more than
one county, the county executive committees of the coun-
ties concerned shall resolve themselves into a judicial
circuit committee for discharge of the duties relating to
such nominations.

Sec. 4. Congressmen Vacancies.—If there be a vacancy
in the representation from this state in the house of rep-
resentatives in the Congress of the United States, the gov-
ernor shall, within ten days after the fact comes to his
knowledge, give notice thereof by proclamation, to be
published once each week for two successive weeks in
two newspapers of opposite politics in each county in the
district where such vacancy may occur. In such procla-
mation he shall appoint some day, not less than thirty
nor more than seventy-five days from the date thereof,
for holding the election to fill such vacancy. Nomina-
tions to fill such vacancy shall be made in the manner
prescribed for nominating a candidate to fill a vacancy
in the office of governor, to be voted for at a special elec-
tion. The congressional district executive committee of
a party shall perform the duties devolving upon the state
executive committee in filling a state office.

Sec. 5. Vacancies in State Legislature.—Any vacancy
in the office of state senator or member of the house of
delegates shall be filled by appointment by the governor,
in each instance from a list of three legally qualified per-
sons submitted by the county party executive committee
in the case of a member of the house of delegates, and by
the party executive committee of the state senatorial dis-
trict in the case of a state senator, of the party with which
the person holding the office immediately preceding the
vacancy was affiliated, and of the county or state sena-
torial district, respectively, in which he resided at the
time of his election or appointment. The appointment to
fill a vacancy in the house of delegates shall be for the
unexpired term. If the unexpired term in the office of
state senator be for less than two years and two months,
the appointment shall be for the unexpired term. If the
unexpired term be for a period longer than two years
and two months, the appointment shall be until the
next general election and until the election and qualifi-
cation of a successor to the person appointed, at which
general election the vacancy shall be filled by election
for the unexpired term. Notice of an election to fill
a vacancy in the office of state senator shall be given
by the governor by proclamation and shall be pub-
ished once a week for two successive weeks prior to
the date of the election, in two newspapers having the
largest and second largest circulation, and of opposite
party politics, published in each county in the senatorial
29 district. Nominations for candidates to fill such vacancy
30 shall be made in the manner prescribed for nominating a
31 candidate to fill a vacancy in the office of governor to be
32 voted for at a general election. The state senatorial dis-
33 trict executive committee of the political party shall dis-
34 charge the duties incident to state senator nominations
35 devolving upon the party state executive committee in
36 nominating a candidate for a state office.

Sec. 6. Circuit Court Clerk Vacancies.—When a va-
2 cancy occurs in the office of clerk of the circuit court,
3 the circuit court, or the judge thereof in vacation,
4 shall fill the same by appointment until the next gen-
5 eral election, and the person so appointed shall hold of-
6 fice until his successor is elected and qualified. At such
7 general election a clerk shall be elected for the unexpired
8 term. The circuit court, or the judge thereof in vacation,
9 shall cause a notice of such election to be published once
10 each week for two successive weeks in two newspapers
11 of opposite politics, printed in the county, if there be any
12 such papers printed therein, or in such other manner as
13 will give ample notice of such election. If the vacancy
14 occurs before the primary election held to nominate can-
15 didates to be voted for at the general election, at which
16 any such vacancy is to be filled, candidates to fill such
17 vacancy shall be nominated at such primary election in
18 accordance with the time requirements and the provisions
19 and procedures prescribed in article five of this chapter.
20 Otherwise, they shall be nominated by the county execu-
21 tive committee in the manner provided in section nine-
22 teen, article five, of this chapter, as in the case of filling
23 vacancies in nominations, and the names of the persons,
24 so nominated and certified to the clerk of the circuit court
25 of such county, shall be placed upon the ballot to be voted
26 at such next general election.

Sec. 7. County Commissioner, Clerk of County Court,
2 Justice and Constable Vacancies.—Any vacancy in the of-
3 fice of county court commissioner, clerk of county court,
4 justice or constable shall be filled by the county court of
5 the county, unless the number of vacancies in a county
6 court deprive that body of a quorum, in which case the
governor of the state shall fill any vacancy in such county
court necessary to create a quorum thereof, until the next
general election, at which election every such vacancy
shall be filled by election for the unexpired term. In the
case of a vacancy in the office of the county court com-
missioner in any county in the state, if the remaining
members of such county court fail, refuse or neglect to
fill such vacancy within sixty days from the time it occurs,
then the governor of the state shall appoint some qualified
citizen of said county belonging to the same political party
as the vacating member to serve as county court com-
missioner until the next general election. Notice of such
election shall be given by order of the county court, and
published as prescribed in the next preceding section,
except that such notice in case of an election to fill a
vacancy in the office of justice of the peace or constable,
instead of being published in a newspaper, may, in the
discretion of such court, be posted at the front door of the
courthouse of the county, and at each voting place in
the district wherein such vacancy occurs. Nominations of
candidates to fill any vacancy in the office of county com-
missioner, clerk of the county court, justice or constable
shall be made in the manner prescribed for making nomi-
nations to fill a vacancy in the office of the clerk of the
circuit court.

Sec. 8. Prosecuting Attorney, Sheriff, Assessor and Surveyor Vacancies.—Any vacancy occurring in the office of
prosecuting attorney, sheriff, assessor or county surveyor
shall be filled by appointment by the county court until the
next general election at which time such vacancy shall be
filled by election for the unexpired term. Notice of an
election to fill a vacancy in any of the offices named in this
section shall be given by the county court, or by the presi-
dent thereof in vacation, and published or posted in the
manner prescribed in section six of this article. Nomin-
ation of candidates to fill any such vacancy shall be made
in the manner prescribed in said section six of this article
for nominating candidates to fill a vacancy in the office
of the clerk of the circuit court.
AN ACT to amend chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting sections five, seven, eight, nine, ten, twelve and eighteen, article two thereof, and by adding to article one thereof a new section, designated section three-a, and to article two thereof seven new sections, designated sections four-a, seven-a, seven-b, nine-a, eleven-a, fourteen-a and sixteen-a, all relating to the exercise of the right of eminent domain.

Be it enacted by the Legislature of West Virginia:

That chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by amending and reenacting sections five, seven, eight, nine, ten, twelve and eighteen, article two thereof, and by adding to article one thereof a new section, designated section three-a, and to article two thereof seven new sections, designated sections four-a, seven-a, seven-b, nine-a, eleven-a, fourteen-a and sixteen-a, all to read as follows:

Article
1. Right of Eminent Domain.
2. Procedure.

Article 1. Right of Eminent Domain.

Section
3-a. Entry by political body to obtain data.

Section 3-a. Entry by Political Body to Obtain Data.—
2 If the applicant be the state of West Virginia, or any agency or political subdivision thereof, and if the applicant shall have given the person residing thereon, if any, at least three days' notice of its intent, the applicant, by its authorized contractors, officers, agents, and employees, may enter and bring necessary or desirable machinery,
equipment and tools upon any property, waters and
premises in this state, to make thereon such surveys,
inspections, examinations, investigations, tests, soundings
and drillings as the applicant shall deem necessary or
desirable for the purpose for which the property, or an
interest or right therein, is proposed to be taken, which
shall include, but shall not be limited to, laying out the
lands, ways and easements, and acquiring data and in-
formation deemed necessary or desirable by the appli-
cant in contemplation of acquiring the property, waters
or premises, or an interest or right therein, by the power
of eminent domain. Such entry or acts authorized by
this section shall not be deemed either a trespass or an
entry under any condemnation proceeding which may
then be pending. Such entry or acts shall not continue
longer than one year, except by the consent in writing
of the owner, or by authority of the circuit court of the
county wherein the property lies. It shall be the duty
of the applicant to compensate the owner reasonably for
the use of his property and to pay him the amount of
any actual or demonstrable damages proximately result-
ing from any such entry or acts. In the event the appli-
cant and the owner cannot agree as to the amount of such
damage, if any, the applicant shall institute a condemna-
tion proceeding for the purpose of determining the
amount thereof, if any. If the applicant shall fail to in-
stitute such a proceeding within sixty days after receipt
of demand therefor from the owner, by certified or reg-
istered mail, the owner may have a writ of mandamus
in the circuit court of the county wherein such entry or
act authorized by this section was made or performed,
to compel the applicant to institute and prosecute to com-
pletion a condemnation proceeding for such purpose.

Article 2. Procedure.

Section
4-a. Lis pendens notice; effect.
5. Commissioners; qualifications.
7. Oath of commissioners.
7-a. Information for commissioners.
7-b. Supervision of hearings.
8. Powers of commissioners; hearings.
9-a. Separate findings of compensation and damages.
10. Proceedings on report; trial by jury.
11-a. Waiver of findings by commissioners.
14-a. Condemnation by state or its political subdivision; alternative method.
18. Payment to clerk; disposition of money paid into court.

Section 4-a. Lis Pendens Notice; Effect.—At the time of the filing of an eminent domain petition, the applicant may file a notice of the pendency of such proceeding as provided in section two, article eleven, chapter fifty-five of this code, containing the information therein required so far as the provisions therein are applicable. From the time of such filing every purchaser or encumbrancer whose conveyance or encumbrance is not then recorded or docked shall be deemed a subsequent purchaser or encumbrancer and shall be bound by the proceeding to the same extent and in the same manner as if he were a party therein.

Sec. 5. Commissioners; Qualifications.—When it shall appear to the court, or the judge thereof in vacation, that proper notice has been given and that the case is one in which the applicant has lawful right to take property for the purposes stated in the petition, upon making just compensation, five disinterested freeholders shall be appointed commissioners to ascertain what will be a just compensation and any damages to the persons entitled thereto, for the property, or interest or right therein, proposed to be taken.

The following persons shall be deemed interested and shall not be appointed as commissioners: Any person who is personally interested in the property, or interest or right therein, proposed to be taken or in the compensation and any damages to be awarded therefor, or who is related by blood or marriage to any person having such personal interest, or who stands in the relation of guardian and ward, master and servant, principal and agent, or partner, real estate broker, or surety to any person having such personal interest, or who has enmity against or bias in favor of any person who has such personal interest, or who is the owner of, or interested in, any real estate over or through which the work of internal
improvement will pass. No person shall be deemed interested or incompetent to act as commissioner by reason of his being an inhabitant of the county, district, or municipal corporation, on behalf of which application is made, or holding property therein.

Sec. 7. Oath of Commissioners.—Before entering upon the discharge of his duties, each commissioner shall take an oath, before some person authorized by law to administer it, that he will honestly, faithfully, and impartially ascertain to the best of his skill and judgment what will be a just compensation to the persons entitled thereto for the property, or interest or right therein, proposed to be taken, including, where applicable, any damages to the extent provided by section nine of this article. The oath shall be certified, by the person administering it, and shall be filed, with the papers of the proceeding, in the office of the clerk of the court.

Sec. 7-a. Information for Commissioners.—Before entering upon the discharge of his duties, each commissioner shall be informed generally, in writing or otherwise, by the court, or the judge thereof in vacation, as to the duties and responsibilities of a condemnation commissioner and as to the law applicable to the deliberations of condemnation commissioners.

Sec. 7-b. Supervision of Hearings.—The court may, and upon motion of any party shall, preside over and supervise all hearings held by the condemnation commission or appoint for such purpose one of its own commissioners, or a special commissioner, to be known as a court commissioner, who shall preside over and supervise all hearings held by the condemnation commission. The person presiding, or the clerk of the court, may sign and issue subpoenas for witnesses, including subpoenas duces tecum, and may swear any witness that the evidence which he will give relating to the matter to be reported by the condemnation commission shall be the truth, the whole truth, and nothing but the truth. The person presiding shall rule on all questions of evidence, instruct the condemnation commissioners as to the law, and otherwise exercise
all the functions of a judge in the trial of a civil action to the extent necessary for the determination of any issues before the condemnation commission. In the event a court commissioner is appointed to preside over and supervise all of the hearings to be held by a condemnation commission such court commissioner shall be allowed for his services a reasonable sum to be fixed by the court, such sum to be taxed in the bill of costs against the moving party.

Sec. 8. Powers of Commissioners; Hearings.—Any three of the commissioners may act in the absence of the others, and any one of them may sign and issue subpoenas for witnesses in like manner as a justice, and with like effect; and may swear any witness who appears before them, that the evidence which he will give relating to the matters to be reported upon by the said commissioners shall be the truth, the whole truth, and nothing but the truth. They may adjourn their sessions from time to time as shall be necessary; and any person interested may attend in person or by attorney, produce and examine witnesses, read depositions duly taken, and other proper evidence, and be heard, if he requests it, in support of his rights, according to the usages and rules of law.

A view of the property to be taken shall not be required unless a demand therefor is made by a party in interest. In the event a court commissioner is appointed to preside over and supervise all of the hearings to be held by a condemnation commission pursuant to the provisions of section seven-b of this article such court commissioner shall go with the commissioners and shall control the proceedings.

Sec. 9. Report of Commissioners.—The commissioners, after viewing the property, if a view is demanded, and hearing any proper evidence which is offered shall ascertain what will be a just compensation to the person entitled thereto for so much thereof as is proposed to be taken, or for the interest therein, if less than a fee, and for damage to the residue of the tract beyond all benefits to be derived, in respect to such residue, from the work to be constructed, or the purpose to which the land to be
taken is to be appropriated, including, when less than the
fee is taken, the actual damage, if any, done, or that may
be done, to the fee by such construction, and make report
to the following effect: We, the commissioners, appointed
by the circuit court of ________ county, (or by the judge
thereof in vacation, as the case may be) by an order made
on the ________ day of ________, on the application of ________,
respectfully report, that having first been duly sworn,
we have viewed the real estate owned by ________, men-
tioned in the said application, and are of opinion that
__________ dollars will be a just compensation for so much
of the said real estate as is proposed to be taken by the
said applicant, that is to say: (here describe the part to
be taken, and the interest therein, if less than a fee, so
as to identify the same with reasonable certainty, which
description may be supplemented by reference to a plat
annexed to the report, or in any manner that would be
sufficient in a conveyance) as well as for damages to the
residue of the said real estate beyond all benefits which
will be derived in respect to such residue from the work
to be constructed (or from the purposes to which the part
to be taken by said applicant is to be appropriated).

Given under our hands this_________ day of______________.

But if the property is proposed to be taken by a com-
pany incorporated for construction of a railroad, no
damages shall be ascertained for the construction of any
farm crossing, fences, or cattle guards, or for keeping the
same in repair. The report shall be signed by at least
three of the commissioners, and forthwith returned to
the clerk's office of the court, to be filed with the papers
of the case.

Sec. 9-a. Separate Findings of Compensation and Dam-
ages.—If the report of the commissioners includes any
sum for damages, in addition to the sum for just compen-
sation for the property, or interest or right therein, pro-
posed to be taken, the commissioners shall, if the owner
or owners of the property request the same, state in their
report what sum has been fixed as damages.

Sec. 10. Proceedings on Report; Trial by Jury.—Within
ten days after the report required by the provisions of
section nine of this article is returned and filed, either
demand that the
paid, be ascertained by a jury, in which case a jury of
twelve freeholders shall be selected and impaneled for
the purpose, as juries are selected in civil actions. But
no person shall sit on such jury who would not be eligible
to serve as a condemnation commissioner in the pro-
ceeding. The cause shall be tried as other causes in such
court, except that any person who served as a condemna-
tion commissioner in the proceeding shall not be ex-
amined as a witness in regard to just compensation or
any damages. The jury, ascertaining the damages or com-
pensation to which the owner of the property, or interest
or right therein, proposed to be taken is entitled, shall
be governed by sections nine and nine-a of this article
except that a view of the property proposed to be taken
shall not be required: Provided, That in the event a de-
mand therefor is made by a party in interest, the jury
shall be taken to view the property, and in such case,
the judge presiding at the trial shall go with the jury
and shall control the proceedings.

If no exceptions be filed to such report, and neither
party demand a trial by jury as aforesaid, the court, or
the judge thereof in vacation, unless good cause be
shown against it, or it be defective or erroneous on its
face, shall confirm such report, and order it to be re-
corded in the proper order book of the court.

Sec. 11-a. Waiver of Findings by Commissioners.—If at
any time prior to the appointment of condemnation com-
missioners, or in the event condemnation commissioners
have been appointed, if at any time prior to the making
of a report by the condemnation commissioners pursuant
to the provisions of section nine of this article, all of the
parties who have appeared in the proceeding agree to
waive the findings of the condemnation commissioners
and file a stipulation to this effect with the clerk of the
court, the question of the compensation and any damages
to be paid shall be ascertained by a jury in the manner
provided by section ten of this article and a hearing before
the condemnation commissioners shall not be necessary. Any such stipulation shall be filed with the papers of this proceeding.

Sec. 12. Vesting of Title in Applicant.—Except as otherwise provided in this article, at any time within three months after the report, or the verdict of a jury, if there be one, has been confirmed and ordered to be recorded, the sum so ascertained with legal interest thereon from the date of the report or verdict until payment, may be paid by the applicant into court; upon such payment, title to the property, or interest or right therein, so paid for shall be absolutely vested in the applicant in fee simple or to the extent described in the petition: Provided, That in the case of a public road title to the right of way only shall absolutely vest in the applicant.

Sec. 14-a. Condemnation by State or Its Political Subdivision; Alternative Method.—Prior to any report by condemnation commissioners, or verdict of a jury, if the applicant be the state of West Virginia or any political subdivision thereof, and be otherwise authorized by law to make payment as required in this section, on filing its petition as authorized in this article, and if the court or judge is satisfied that the purpose for which the property or interest or right therein, is sought to be condemned is a public use for which private property may be appropriated on compensating the owner, the applicant may thereupon acquire title to, and enter upon, take possession of, appropriate and use the property, or interest or right therein, sought to be condemned for the purposes stated in the petition by following the method provided in this section.

Before entry, taking possession, appropriation, or use, the applicant shall pay into court such sum as it shall estimate to be the fair value of the property, or estate, right, or interest therein, sought to be condemned, including, where applicable, the damages, if any, to the residue beyond the benefits, if any, to such residue, by reason of the taking. The court or judge may, at the request of any party to the proceeding, require the clerk of the court to give an additional bond, adequate to pro-
tect such deposit with the clerk; and if such bond is re-
quired, the applicant shall pay the necessary premiums.

Upon such payment into court, the title to the property,
or interest or right therein, sought to be condemned, shall
be vested in the applicant, and the court or judge shall,
at the request of the applicant, make an order permitting
the applicant at once to enter upon, take possession, ap-
propriate and use the property, or interest or right there-
in, sought to be condemned for the purposes stated in the
petition, but the owners of such property, or interest or
right therein, at the time of such payment, including
lienors and conflicting claimants, shall have such title,
interest, or right in the money paid into court as they
had in the property, or interest or right therein, sought
to be condemned, and all liens by deed of trust, judgment
or otherwise, upon such property, or interest or right
therein, shall be transferred to such fund in court, subject
to the provisions of this section. The title in the applicant
shall be defeasible until the compensation and any dam-
ages are determined in the condemnation proceedings and
the applicant has paid any excess amount into court.

Upon petition to the court or judge, any person entitled
thereto may be paid his pro rata share of the money paid
into court, or a portion thereof, as ordered by the court or
judge, but the acceptance of such payment shall not limit
the amount to be allowed by the report of the condemna-
tion commissioners, or the verdict of a jury, if there be
one. Proceedings for the distribution of the money so
paid into court shall be conducted as provided in section
eighteen of this article to the extent that the provisions
therein are applicable. No party to the condemnation pro-
ceeding shall be permitted to introduce evidence of such
payment or of the amount so paid into court, or of any
amount which has been accepted by any party, nor shall
reference be made thereto during the course of the trial.

If the applicant shall enter upon or take possession of
the property, under the authority of this section, and shall
injure the property, the applicant shall not be entitled,
without the consent of the defendant, to abandon the
proceeding for the condemnation thereof, but such pro-
ceeding shall proceed to final award or judgment, and
the amount of compensation and any damages as finally
determined in such proceeding shall be paid in the man-
ner provided by this section.

When, after payment into court as provided under the
authority of this section, the amount allowed by the re-
port of the condemnation commissioners, or the verdict
of a jury, if there be one, exceeds the amount which has
been paid into court, the excess amount, together with
interest thereon at six per cent from the date of such
original deposit to the date of payment of the excess
amount into court, may, at any time within three months
after the report or verdict of a jury, as the case may be,
has been confirmed and ordered to be recorded, be paid
into court by the applicant for the persons entitled there-
to. In no other instance shall interest be allowed on pay-
ments made pursuant to the provisions of this section.

If the amount which has been paid into court pursuant
to this section exceeds the amount allowed by the report
of the condemnation commissioners, or the verdict of a
jury, if there be one, the excess shall be repaid to the
applicant out of such fund in court, or, if the amount re-
maining in the fund be insufficient, then the persons to
whom the fund, or any part thereof, has been paid, shall
reimburse the applicant, on a pro rata basis, but without
interest. If the applicant has the right to abandon the
proceeding and does so, the amount which has been paid
into court pursuant to this section shall be repaid to the
applicant from such fund in court and by any persons
to whom the fund, or any part thereof, has been paid,
on a pro rata basis, but without interest.

If the amount allowed by the report of the condemna-
tion commissioners, or the verdict of the jury, if there be
one, does not exceed the sum paid into court and it shall
appear that the latter amount was tendered by the appli-
cant to the defendant prior to the institution of the pro-
cceeding, the defendant shall pay the costs of the proceed-
ing in the trial court unless the refusal to accept the
tender was based on some ground other than that of
insufficiency of compensation and any damages.
When the report of the condemnation commissioners, or the verdict of a jury, if there be one, has been confirmed and ordered to be recorded, and the excess amount, if any, has been paid into court as provided herein, the title to the property, or interest or right therein, so paid for shall be absolutely and indefeasibly vested in the applicant in fee simple or to the extent described in the petition: Provided, That in the case of a public road title to the right of way only shall absolutely vest in the applicant.

Sec. 16-a. Costs.—Except as otherwise specially provided, all costs of a condemnation proceeding in the trial court shall be paid by the applicant. In every condemnation proceeding in an appellate court, costs shall be recovered in such court by the party substantially prevailing.

Sec. 18. Payment to Clerk; Disposition of Money Paid into Court.—Payment of an award or judgment, or any money, under any of the provisions of this chapter may be made to the clerk of the court in which such proceeding is had, and such payment shall be deemed to be a payment into court. The clerk to whom payment is so made, together with the surety on his official bond, shall be liable therefor, as for other moneys collected by him by virtue of his office.

Upon money being paid into court, pursuant to the provisions of this chapter, and the court or judge being satisfied that the persons entitled thereto are before the court or judge, it or he shall make such distribution or disposition of such money as is proper, having due regard to the interest of all persons therein, and in what proportions such money is properly payable.

If it shall appear that the petition states the persons or classes of persons, who, in the opinion of the applicant, are vested with the superior right or claim of title in the property, or interest or right therein, condemned or sought to be condemned or in the amount allowed or to be allowed by the report of the condemnation commissioners, or the verdict of a jury, if there be one, and it does not appear from the record or otherwise that there is any denial or dispute, by any person or party in interest, of such
statement in the petition, the court or judge may direct
that the money paid into court, after withholding there-
from any sum necessary for payment of any taxes which
are a lien upon the property, interest, or right, be dis-
bursed and distributed in accordance with the statement
in the petition, among the persons entitled thereto, except
that with respect to any persons appearing to be infants,
incompetents, incarcerated convicts, or under any other
legal disability, the court or judge shall inquire into their
rights or claims, independent of any statement in the pe-
tition, and any order for disbursement or distribution shall
conserve and protect the rights or claims of such persons
in and to the money paid into court.

If it shall appear to the court or judge, from the record
or otherwise, that there exists a controversy among claim-
ants to the money paid into court, or to the ownership of
the property, or interest or right therein, condemned or
sought to be condemned, the court or judge shall enter
an order setting a time for hearing the case and deter-
mining the rights and claims of all persons entitled to the
money paid into court or to any interest or share therein.
To aid in properly disposing of the money, the court or
judge may appoint a commissioner to take evidence of
the conflicting claims. The court or judge may direct
publication to be made requiring all who are interested
to appear at the time set for hearing the case to present
their respective claims. Such costs shall be allowed to
the prevailing persons as the court or judge shall direct.
Upon a determination by the court or judge of the
rights and claims of the persons entitled to the money
paid into court, with or without a report of such commis-
ioner, judgment shall be entered directing the disburse-
ment or distribution, after withholding for taxes as pro-
vided in the next preceding paragraph, to the persons
entitled thereto, provided that the rights or claims of
persons under legal disability shall be protected as pro-
vided in the next preceding paragraph.
AN ACT to amend and reenact article two, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the commissioner and the department of employment security.

Be it enacted by the Legislature of West Virginia:

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

**Article 2. The Commissioner of Employment Security.**

**Section 1. Appointment.**—The department shall be under the supervision of a commissioner of employment security. The commissioner 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. 1-a. Powers Formerly Granted Director Vested in
Commissioner; References to Director Construed to Mean
Commissioner.—The powers and duties heretofore granted
to the director of employment security by chapter twenty-
one-a of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, shall now be vested in
the commissioner of employment security. Wherever in
this chapter or elsewhere in law reference is made to the
director of employment security, such reference shall
henceforth be construed and understood to mean the com-
missioner of employment security.

Sec. 2. Qualifications.—The commissioner shall be
selected with special reference to his training, experi-
ence, and capacity.
He shall not be a candidate for or hold any other public
code or trust, nor shall he be a member of a political
committee. If he becomes a candidate for a public office
or becomes a member of a political committee, his office
as commissioner shall be immediately vacated. He shall
devote his entire time to the duties of his office.

Sec. 3. Oath.—The commissioner, before entering upon
the duties of his office, shall take and subscribe to the
oath prescribed by article four, section five of the state
constitution. The oath shall be filed with the secretary
of state.

Sec. 4. Offices.—The office of the commissioner shall
be located at the capitol. The commissioner shall keep his
offices open at all reasonable times for the transaction
of public business.

Sec. 5. Compensation; Traveling Expenses.—Notwith-
standing the provisions of section two-a, article seven,
chapter six of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, the commissioner
of employment security shall receive a yearly salary of
thirteen thousand dollars and the necessary traveling
expenses incident to the performance of his duties. Requi-
sition for traveling expenses shall be accompanied by a
sworn itemized statement which shall be filed with the
auditor and preserved as a public record.
Sec. 6. Powers and Duties Generally.—The commissioner 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 United States department of labor may from time to time require, and comply with such provisions as the United States department of labor may from time to time find necessary to assure the correctness and verification of such reports;

(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;

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

(9) Sign and execute in the name of the state, by “The State Department of Employment Security”, any con-
tract or agreement with the federal government, its agencies, other states, their subdivisions, or private persons;

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

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

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

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

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

Sec. 6-a. Reciprocal Agreements.—(1) The commissioner may enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or the federal government, or both, whereby:

(a) Services performed by an individual for a single employing unit for which services are customarily performed by such individual in more than one state shall be deemed to be services performed entirely within any one of the states (i) in which any part of such individual’s service is performed or (ii) in which such individual has his residence or (iii) in which the employing unit maintains a place of business, provided there is in effect, as to such services, an election by an employing unit, and approved by the agency charged with the administration of such state’s unemployment compensation law pursuant to which services performed by such individual for such employing unit are deemed to be performed entirely within such state;

(b) Potential rights to benefits accumulated under the unemployment compensation laws of one or more states or under one or more such laws of the federal government, or both, may constitute the basis for the payment
of benefits through a single appropriate agency under
terms which the commissioner finds will be fair and
reasonable as to all affected interests and will not result
in any substantial loss to the fund;

(c) Wages or services, upon the basis of which an
individual may become entitled to benefits under an
unemployment compensation law of another state or of
the federal government, shall be deemed to be wages
for insured work for the purpose of determining his
rights to benefits under this chapter, and wages for in-
sured work, on the basis of which an individual may be-
come entitled to benefits under this chapter and shall be
deemed to be wages or services on the basis of which
unemployment compensation under such law of another
state or of the federal government is payable, but no
such arrangement shall be entered into unless it contains
provisions for reimbursements to the fund for such of the
benefits paid under this chapter upon the basis of such
wages or services, and provisions for reimbursements
from the fund for such of the compensation paid under
such other law upon the basis of wages for insured work,
as the commissioner finds will be fair and reasonable as
to all affected interests; and

(d) Contributions due under this chapter with respect
to wages for insured work shall for the purposes of this
chapter be deemed to have been paid to the fund as of
the date payment was made as contributions therefor
under another state or federal unemployment compen-
sation law, but no such arrangement shall be entered
into unless it contains provisions for such reimbursement
to the fund of such contributions as the commissioner
finds will be fair and reasonable as to all affected inter-
ests.

(2) Reimbursements paid from the fund pursuant to
paragraph (c) of subsection one of this section shall be
deemed to be benefits for the purpose of this chapter.
The commissioner is authorized to make to other states or
federal agencies and to receive from such other states or
federal agencies, reimbursements from or to the fund,
in accordance with arrangements entered into pursuant to
subsection one of this section.
To the extent permissible under the laws and constitution of the United States, the commissioner is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this chapter and facilities and services provided under the unemployment compensation law of any foreign government, may be utilized for the taking of claims and the payment of benefits under the employment security law of this state or under a similar law of such government.

Sec. 7. Divisions within the Department.—The commissioner shall establish within the department the division of unemployment compensation, and the division of employment service and such other divisions as will promote efficiency and economy in administration. Each division shall be a separate administrative division with respect to personnel, budget and duties, except insofar as the commissioner may find that such separation is impracticable.

Sec. 8. Assistants and Employees.—Upon a non-partisan merit basis the commissioner shall appoint the division and unit heads, and such assistants and employees as may be necessary to the efficient operation of the department. He shall fix their compensation in accordance with the provisions of section nine of this article.

Sec. 9. Classification of Services and Compensation.—The commissioner shall by uniform regulations:

1. Classify the different types of services to be performed for the department;
2. Prescribe the qualifications of education, training, and experience for the appointees and employees of each class; and
3. Fix a maximum and minimum salary for each class.

Sec. 10. Examinations and Annual Merit Ratings.—The commissioner shall hold examinations to determine the technical and professional qualifications of applicants for positions. The examinations shall be a guide to the commissioner in making his appointments.
The commissioner shall annually rate the employees according to their merit and shall determine whether they are maintaining standards of eligibility.

Sec. 11. Dismissal, Termination, Lay-Off, Suspension. —The commissioner shall establish regulations governing dismissals, terminations, lay-offs, and suspensions. Severance of employees' relationship with the department shall be in accordance with these regulations. All severances shall be for good cause. Failure to maintain technical or professional qualifications shall be a good cause for severance.

Sec. 12. Delegation of Duties.—All powers and duties vested in the commissioner may be delegated by him to his appointees and employees; but the commissioner shall be responsible for their acts.

Sec. 13. Deputies.—For the original determination of benefit claims, the commissioner shall appoint a necessary number of deputies as his representatives.

Sec. 14. State Employment Service.—The commissioner shall appoint upon a nonpartisan merit basis the head of the division of the employment service and shall fix his salary and prescribe his duties.

Sec. 15. Employment Offices.—The commissioner shall establish and maintain free public employment offices in such places as necessary for the proper administration of this chapter and for the purpose of performing the duties within the purview of the act of Congress entitled "An act to provide for the establishment of a national employment system and for cooperation with states in the promotion of such system, and for other purposes," approved June six, one thousand nine hundred thirty-three, as amended.

Sec. 16. Federal-State Cooperation.—The commissioner shall have all powers and duties necessary to secure to the state the benefits of congressional action for the promotion and maintenance of a system of public employment offices. To this end the provisions of the act referred to in the preceding section and such additional congressional action consistent with the above act are
accepted by the state and the state pledges its observance
and compliance therewith.

The department of employment security, by its com-
missioner, is designated the agent of this state for the
purpose of compliance with the act of Congress entitled
"An act to provide for the establishment of a national
employment system and for cooperation with states in
the promotion of such systems, and for other purposes,"
approved June six, one thousand nine hundred thirty-
three, as amended.

The department of employment security, by its com-
missioner, is designated the agent of this state for the
purpose of complying with and administering sections
sixteen and seventeen of an act of Congress entitled "An
act to extend and improve the unemployment compensa-
program," approved September one, one thousand
nine hundred fifty-four.

The department of employment security, by its com-
missioner, is designated the agent of this state for the
purpose of complying with and administering an act of
Congress entitled "An act to amend title XV of the
Social Security Act to extend the unemployment insur-
ice system to ex-servicemen, and for other purposes,"
approved August twenty-eight, one thousand nine hun-
dred fifty-eight.

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

The department of employment security, by its com-
missioner, is designated the agent of this state for the
purpose of complying with and administering an act of
Congress entitled "An act to establish an effective pro-
gram to alleviate conditions of substantial and persistent
unemployment and underemployment in certain economi-
cally distressed areas," approved May one, one thousand
nine hundred sixty-one.
The department of employment security, by its commissioner, is designated the agent of this state for the purpose of complying with and administering chapter three of title III of an act of Congress entitled “An act to promote the general welfare, foreign policy, and security of the United States through international trade agreements and through adjustment assistance to domestic industry, agriculture, and labor, and for other purposes,” approved October eleven, one thousand nine hundred sixty-two.

The department of employment security, by its commissioner, is designated the agent of this state for the purpose of complying with and administering an act of Congress entitled “An act to provide for the establishment of a temporary program of extended unemployment compensation, to provide for a temporary increase in the rate of the federal unemployment tax, and for other purposes,” approved January three, one thousand nine hundred sixty-one.

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

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

The commissioner is also authorized, with the approval of the advisory council, to apply for an advance to the unemployment compensation fund in accordance with the conditions specified in title twelve of the social security act, as amended, in order to secure to this state and its citizens the advantages available under the provisions of that title.

Sec. 17. Acceptance of Aid.—All moneys received by this state under the said act of Congress, as amended,
shall be paid into the employment service account, to be expended as provided by this chapter and by said act of Congress. For the purpose of establishing and maintaining free public employment offices, the commissioner may enter into agreements with any political subdivision of the state or with any private nonprofit organization, and as part of such an agreement the commissioner may accept money, services, or quarters as a contribution to the employment service account.

Sec. 18. Legal Assistants.—The attorney general and his assistants and the prosecuting attorneys of the several counties shall render to the commissioner without additional compensation such legal services as in the discharge of his duties he shall require.

The commissioner may employ temporarily or as regular members of the department additional legal counsel. The remuneration of such counsel shall be paid from the administration fund.

Sec. 19. Rules and Regulations.—The commissioner may issue rules and regulations in accordance with such regular procedure as the commissioner shall prescribe.

Sec. 20. Oaths and Witnesses.—The commissioner and his specially authorized representatives shall have the power to administer oaths, take depositions, certify official acts, and issue subpoenas to compel the attendance of witnesses and production of papers necessary as evidence in connection with a dispute or the administration of this chapter.

Sec. 21. Subpoenas.—The commissioner or his authorized representative shall have the power to issue subpoena for the production of persons and papers in all proceedings within the purview of this chapter. In case a person refuses to obey such subpoena the commissioner or his representative may invoke the aid of any circuit court in order that the testimony or evidence be produced. Upon proper showing, such court shall issue a subpoena or order requiring such persons to appear before the commissioner or his representative and produce all evidence and give all testimony touching the matter in question.
A person failing to obey such order may be punished by such court as for contempt.

Sec. 22. Publication.—The commissioner shall print for public distribution:
1. The text of this chapter;
2. The regulations and general rules of the division;
3. Such other material as the commissioner deems relevant and suitable for the more effective administration of the chapter, including, for distribution to employers and organizations and associations representative of employer and employee interests, quarterly statements of the condition of the unemployment compensation trust fund and any other information relating to the administration thereof which the commissioner may deem to be pertinent and proper.

CHAPTER 67

(Com. Sub. for Senate Bill No. 217—Originating in the Senate Committee on the Judiciary)

[Passed March 9, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to repeal article one-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal article six of said chapter and to enact in lieu thereof a new article six; and to amend and reenact sections three and four, article one, sections seven and ten-a, article five and section five-a, article nine of said chapter, all relating to unemployment compensation.

Be it enacted by the Legislature of West Virginia:

That article one-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article six of said chapter be repealed and a new article six enacted in lieu thereof; and that sections three
and four, article one, sections seven and ten-a, article five and section five-a, article nine of said chapter be amended and re-enacted to read as follows:

Article
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.


Section
3. Definitions.
4. Department of employment security.

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 purposes of this definition if the individual has been
paid wages in his base period sufficient to make him eligible for benefits under the provisions of this chapter.

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

“Board” means board of review.

“Calendar quarter” means the period of three consecutive calendar months ending on March thirty-one, June thirty, September thirty, or December thirty-one, or the equivalent thereof as the director may by regulation prescribe.

“Commissioner” means the employment security commissioner.

“Computation date” means June thirty of the year immediately preceding the January one on which an employer’s contribution rate becomes effective.

“Employing unit” means an individual, or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, corporation (domestic or foreign), or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has on January first, one thousand nine hundred thirty-five, or subsequent thereto, had in its employ one or more individuals performing service within this state.

“Employer” means:

(1) Any employing unit which for some portion of a day, not necessarily simultaneously, in each of twenty different calendar weeks, which weeks need not be consecutive, within either the current calendar year, or the preceding calendar year, has had in employment four or more individuals irrespective of whether the same individuals were or were not employed on each of such days;

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

(3) Any employing unit which has acquired or acquires the organization, trade or business, or substantially all the assets thereof, of an employing unit which at the time of such acquisition was an employer subject to this chapter;
Any employing unit which, after December thirty-one, one thousand nine hundred sixty-three, in any one calendar quarter, in any calendar year, has in employment four or more individuals and has paid wages for employment in the total sum of five thousand dollars or more, or which, after such date, has paid wages for employment in any calendar year in the sum total of twenty thousand dollars or more;

(5) Any employing unit which, after December thirty-one, one thousand nine hundred sixty-three, in any three weeks period, in any calendar year, has in employment ten or more individuals.

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

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

(2) The term “employment” shall include an individual’s entire service, performed within or both within and without this state if: (a) The service is localized in this state; or (b) the service is not localized in any state but some of the service is performed in this state and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual’s residence is in this state;

(3) Service not covered under paragraph two of this subsection and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this state and the commissioner approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter;
406  (4) Service shall be deemed to be localized within a state, if: (a) The service is performed entirely within such state; or (b) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within this state. For example, is temporary or transitory in nature or consists of isolated transactions;

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

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

Included and Excluded Service.—If the services performed during one half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. The term "employment" shall not include:
(1) Services performed in the employ of this state or any political subdivision thereof, or any instrumentality of this state or its subdivisions;

(2) Service performed directly in the employ of another state, or its political subdivisions;

(3) Service performed in the employ of the United States or an instrumentality of the United States exempt under the constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law shall be applicable to such instrumentalities, and to service performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals, and services: Provided, That if this state shall not be certified for any year by the secretary of labor under section 1603 (c) of the Federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section nineteen, article five of this chapter, with respect to payments erroneously collected;

(4) Service performed after June thirty, one thousand nine hundred thirty-nine, with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act (52 Stat. 1094), and service under an unemployment compensation system for maritime employees established by an act of Congress. The commissioner may enter into agreements with the proper agency established under such an act of Congress to provide reciprocal treatment to individuals who, after acquiring potential rights to unemployment compensation under an act of Congress, or who have, after acquiring potential rights to unemployment compensation under an act of Congress, acquired rights to benefit under this chapter. Such agreements shall become effective ten days
after such publications as comply with the general rules of the department.

(5) Agricultural Labor.—For the purposes of this chapter, the term “agricultural labor” includes all services performed—

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

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

In connection with the production or harvesting of maple syrup or maple sugar or any agricultural commodity, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes; or

In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.
As used in this definition, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, greenhouses and nurseries, or other similar land areas or structures used primarily for the raising of any agricultural or horticultural commodity, and orchards. The term "greenhouses and nurseries" shall not include greenhouses and nurseries employing more than fifteen full-time employees.

(6) Domestic service in a private home.

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

(8) Service performed by a child under the age of twenty-one years in the employ of his father or mother.

(9) Service performed in the employ of an employing unit organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for prevention of cruelty to children or animals, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

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

(11) Services performed by agents of mutual fund broker-dealers or insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, who are compensated wholly on a commission basis.

Notwithstanding the foregoing exclusions from the definition of "employment", services, except agricultural labor and domestic service in a private home, shall be deemed to be in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund.
after such publications as comply with the general rules of the department.

(5) Agricultural Labor.—For the purposes of this chapter, the term “agricultural labor” includes all services performed—

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

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

In connection with the production or harvesting of maple syrup or maple sugar or any agricultural commodity, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes; or

In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.
As used in this definition, the term “farm” includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, greenhouses and nurseries, or other similar land areas or structures used primarily for the raising of any agricultural or horticultural commodity, and orchards. The term “greenhouses and nurseries” shall not include greenhouses and nurseries employing more than fifteen full-time employees.

(6) Domestic service in a private home.

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

(8) Service performed by a child under the age of twenty-one years in the employ of his father or mother.

(9) Service performed in the employ of an employing unit organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for prevention of cruelty to children or animals, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

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

(11) Services performed by agents of mutual fund broker-dealers or insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, who are compensated wholly on a commission basis.

Notwithstanding the foregoing exclusions from the definition of “employment”, services, except agricultural labor and domestic service in a private home, shall be deemed to be in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund.
“Employment office” means a free employment office or branch thereof, operated by this state, or any free public employment office maintained as a part of a state controlled system of public employment offices in any other state.

“Fund” means the unemployment compensation fund established by this chapter.

“Payments” means the money required to be paid or that may be voluntarily paid into the state unemployment compensation fund as provided in article five of this chapter.

“Separated from employment” means, for the purposes of this chapter, the total severance whether by quitting, discharge, or otherwise, of the employer-employee relationship.

“State” includes, in addition to the states of the United States, Puerto Rico and the District of Columbia.

“Total and partial unemployment”:
(1) An individual shall be deemed totally unemployed in any week in which such individual is separated from employment for an employing unit and during which he performs no services and with respect to which no wages are payable to him.
(2) An individual who has not been separated from employment shall be deemed to be partially unemployed in any week in which due to lack of work he performs no services and with respect to which no wages are payable to him, or in any week in which due to lack of full-time work wages payable to him are less than his weekly benefit amount plus ten dollars.

“Wages” means all remuneration for personal service, including commissions and bonuses and the cash value of all remuneration in any medium other than cash: Provided, That the term “wages” shall not include:
(1) That part of the remuneration which, after remuneration equal to three thousand dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid after December thirty-one, one thousand nine hundred thirty-nine, and prior to Janu-
ary one, one thousand nine hundred forty-seven, to such individual by such employer with respect to employment during such calendar year; or that part of the remuneration which, after remuneration equal to three thousand dollars with respect to employment after one thousand nine hundred thirty-eight has been paid to an individual by an employer during any calendar year after one thousand nine hundred forty-six, is paid to such individual by such employer during such calendar year, except that for the purposes of sections one, ten, eleven and thirteen of article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages: Provided, That notwithstanding the foregoing provisions, on and after January one, one thousand nine hundred sixty-two, the term "wages" shall not include:

That part of the remuneration which, after remuneration equal to three thousand six hundred dollars has been paid to an individual by an employer with respect to employment during any calendar year after one thousand nine hundred sixty-one, except that for the purposes of sections one, ten, eleven and thirteen of article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages: And provided further, That the remuneration paid to an individual by an employer with respect to employment in another state or other states upon which contributions were required of and paid by such employer under an unemployment compensation law of such other state or states shall be included as a part of the remuneration equal to the amounts of three thousand dollars or three thousand six hundred dollars herein referred to. In applying such limitation on the amount of remuneration that is taxable an employer shall be accorded the benefit of all or any portion of such amount which may have been paid by its predecessor or predecessors: Provided, however, That if the definition of the term "wages" as contained in section 3306 (b) of the Internal Revenue Code of 1954 is amended (a) effective prior to January one, one thou-
sand nine hundred sixty-two, to include remuneration in excess of three thousand dollars, or (b) effective on or after January one, one thousand nine hundred sixty-two, to include remuneration in excess of three thousand six hundred dollars, paid to an individual by an employer under the Federal Unemployment Tax Act during any calendar year, wages for the purposes of this definition shall include remuneration paid in a calendar year to an individual by an employer subject to this article or his predecessor with respect to employment during any calendar year up to an amount equal to the amount of remuneration taxable under the Federal Unemployment Tax Act;

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

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

(4) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, to, or on behalf of, an individual in its employ after the expiration of six calendar months fol-
lowing the last calendar month in which such individual
worked for such employer;
(5) Any payment made after December thirty-one, one
thousand nine hundred fifty-two, by an employer to, or
on behalf of, an individual in its employ or his beneficiary
(A) from or to a trust exempt from tax under section
165 (a) of the Federal Internal Revenue Code at the time
of such payment unless such payment is made to such
individual as an employee of the trust as remuneration
for services rendered by such individual and not as a
beneficiary of the trust, or (B) under or to an annuity
plan which, at the time of such payment, meets the re-
quirements of section 165 (a) (3), (4), (5) and (6) of the
Federal Internal Revenue Code;
(6) The payment by an employer (without deduction
from the remuneration of the individual in its employ) of
the tax imposed upon an individual in its employ under
section 1400 of the Federal Internal Revenue Code;
(7) Remuneration paid by an employer after Decem-
ber thirty-one, one thousand nine hundred fifty-two, in
any medium other than cash to an individual in its employ
for service not in the course of the employer's trade or
business;
(8) Any payment (other than vacation or sick pay)
made by an employer after December thirty-one, one
thousand nine hundred fifty-two, to an individual in its
employ after the month in which he attains the age of
sixty-five, if he did not work for the employer in the
period for which such payment is made;
(9) Payments, not required under any contract of hire,
made to an individual with respect to his period of train-
ing or service in the armed forces of the United States by
an employer by which such individual was formerly em-
ployed.
Gratuities customarily received by an individual in the
course of his employment from persons other than his
employing unit shall be treated as wages paid by his
employing unit, if accounted for and reported to such em-
ploying unit.
The reasonable cash value of remuneration in any
medium other than cash shall be estimated and determined in accordance with rules prescribed by the commissioner.

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

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

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

Sec. 4. Department of Employment Security.—There is created a department of employment security, composed of a division of unemployment compensation and a division of employment service, and such other divisions or units as the commissioner determines to be necessary.

Wherever, within this chapter, the term department is used, it shall be taken to mean department of employment security.

Article 5. Employer Coverage and Responsibility.

Section 7. Joint and Separate Accounts.—(1) The commissioner shall maintain a separate account for each employer, and shall credit his account with all contributions paid by him prior to July first, one thousand nine hundred sixty-one. On and after July first, one thousand nine hundred sixty-one, the commissioner shall maintain a separate account for each employer, and shall credit said employer's account with all contributions of such employer in excess of seven tenths of one per cent of taxable wages: Provided, That any adjustment made in an employer's account after the computation date shall not be used in the computation of the credit balance of an employer until the next following computation date: Provided further, That nothing in this chapter shall be construed to grant an employer or individual in his service prior claims or rights to the amounts paid by him into the fund,
either on his own behalf or on behalf of such individuals. The account of any employer which has been inactive for a period of four consecutive calendar years shall be terminated for all purposes.

(2) Benefits paid to an eligible individual for total unemployment beginning after the effective date of this act shall be charged to the account of the last employer with whom he has been employed as much as thirty working days, whether or not such days are consecutive: Provided, That no employer's account shall be charged with benefits paid to any individual who has been separated from a noncovered employing unit in which he was employed as much as thirty days, whether or not such days are consecutive: And provided further, That benefits paid to an eligible individual for partial unemployment beginning after the effective date of this act shall be charged to the account of the claimant's current employer.

(3) The commissioner shall, for each calendar year hereafter, classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts, with a view of fixing such contribution rates as will reflect such experiences. For the purpose of fixing such contribution rates for each calendar year, the books of the department shall be closed on July thirty-one of the preceding calendar year, and any contributions thereafter paid, as well as benefits thereafter paid with respect to compensable weeks ending on or before June thirty of the preceding calendar year, shall not be taken into account until the next annual date for fixing contribution rates: Provided, however, That if an employer has failed to furnish to the commissioner on or before July thirty-one of such preceding calendar year the wage information for all past periods necessary for the computation of the contribution rate, such employer's rate shall be, if it is immediately prior to such July thirty-one, less than two and seven-tenths per cent, increased to two and seven-tenths per cent: Provided further, That any payment made or any information necessary for the computation of a reduced rate furnished on or before the termination of an extension of time for such payment or reporting of
such information granted pursuant to a regulation of the
commissioner authorizing such extension, shall be taken
into account for the purposes of fixing contribution rates:
Provided further, That when the time for filing any report
or making any payment required hereunder falls on
Saturday, Sunday, or a legal holiday, the due date shall
be deemed to be the next succeeding business day: Pro-
vided further, That whenever through mistake or in-
advertence erroneous credits or charges are found to have
been made to or against the reserve account of any em-
ployer, the rate shall be adjusted as of January one of the
calendar year in which such mistake or inadvertence is
discovered; but payments made under any rate assigned
prior to January one of such year shall not be deemed to
be erroneously collected.

(4) The commissioner may prescribe regulations for the
establishment, maintenance, and dissolution of joint ac-
counts by two or more employers, and shall, in accordance
with such regulations and upon application by two or
more employers to establish such an account, or to merge
their several individual accounts in a joint account, main-
tain such joint account as if it constituted a single em-
ployer's account.

Sec. 10-a. Modification or Suspension of Decreased Rates.—(1) As used in this section, unless the context
clearly requires otherwise:

“Due date” means the last day of the month next fol-
lowing a calendar quarter. In determining the amount
in the fund on any due date, contributions received, but
not benefits paid, for such month next following the end
of a calendar quarter shall be included.

(2) The commissioner shall as of the due date for the
payment of contributions for each calendar quarter deter-
mine the amount in the unemployment compensation
fund, including the trust fund, the clearing account, and
the benefit account; and if, at any such time or times the
fund is below the sum of sixty million dollars, the com-
missioner shall, effective at the commencement of the next
calendar quarter, increase each employer's rate one step,
and if, at any time or times the fund is below the sum of
fifty-five million dollars, the commissioner shall further increase each employer's rate one additional step; and if, at any such time or times the fund is below the sum of fifty million dollars, the commissioner shall further increase each employer's rate one additional step; and if, at any such time or times the fund is below the sum of forty-five million dollars, the commissioner shall further increase each employer's rate one additional step.

Where the employer rates have been increased by virtue of the provisions of this section, they shall be correspondingly decreased in the same manner when the balance in the fund returns to the successive levels hereinafter set forth.

For the purposes of this subsection the term “one step” or “one additional step” shall mean two tenths of one per cent, except that for an employer whose rate is zero the term “one step” shall mean three tenths of one per cent: Provided, however, That under no circumstances shall any employer's rate be increased above the maximum rate of two and seven-tenths per cent.

(3) If, as of the due date for the payment of contributions for any calendar quarter, the unemployment compensation fund, including the trust fund, clearing account and benefit account, is below the sum of forty million dollars, the commissioner 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: Provided, however, That for the period through and including the second calendar quarter of one thousand nine hundred fifty-nine such suspending of decreased rates shall not be made until the fund is below the sum of thirty-five million dollars.

(4) 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 and remains above the sum of forty-five million dollars, the commissioner shall supersede the suspension of the decreased rates as provided for in subsection three: Provided, however, That in the event such sus-
pending of the decreased rates was made when the fund was below thirty-five million dollars as also provided in subsection three, then such superseding of the suspension of the decreased rates shall occur when the fund reaches and remains above the sum of forty million dollars.

Article 6. Employee Eligibility; Benefits.

Section 1. Eligibility Qualifications.—An unemployed individual shall be eligible to receive benefits only if the commissioner finds that:

1. He has registered for work at and thereafter continues to report at an employment office in accordance with the regulations of the commissioner.
2. He has made a claim for benefits in accordance with the provisions of article seven of this chapter.
3. He is able to work and is available for full-time work for which he is fitted by prior training or experience.
4. He has been totally unemployed during his benefit year for a waiting period of one week prior to the week for which he claims benefits for total unemployment.
5. He has within his base period earned wages for employment equal to not less than seven hundred dollars.

Sec. 1-a. Seasonal Employment.—An individual working less than one hundred days during his base period in an industry recognized as seasonal, such as food processing and canning, shall not be eligible for benefits unless he has earned wages during his base period in other
Sec. 2. Waiting Period Construed.—If the benefit year ends during a period of total unemployment for any individual, such individual shall serve a new waiting period of one week before benefits accruing in the new benefit year shall be payable.

During the waiting period, the individual must be eligible in all respects, except for the requirements of subsection (2) of section one of this article. No week shall be counted as the waiting period week if benefits have been paid with respect to such week.

Sec. 3. Disqualification for Benefits.—Upon the determination of the facts by the commissioner, an individual shall be disqualified for benefits:

(1) For the week in which he left his most recent work voluntarily without good cause involving fault on the part of the employer and the six weeks immediately following such week. Such disqualification shall carry a reduction in the maximum benefit amount equal to six times the individual’s weekly benefit rate. However, if the claimant returns to work in covered employment during his benefit year, the maximum benefit amount shall be increased by the amount of the decrease imposed under the disqualification. For the purpose of this subsection, the term “work” means employment with the last employing unit with whom such individual was employed as much as thirty days, whether or not such days are consecutive.

(2) For the week in which he was discharged from his most recent work for misconduct and the six weeks immediately following such week. Such disqualification shall carry a reduction in the maximum benefit amount equal to six times the individual’s weekly benefit rate. However, if the claimant returns to work in covered employment for thirty days during his benefit year, whether or not such days are consecutive, the maximum benefit amount shall be increased by the amount of the decrease imposed under the disqualification; except that:

If he were discharged from his most recent work for one of the following reasons: Misconduct consisting of wilful
29 destruction of his employer's property; assault upon the
30 person of his employer or any employee of his employer,
31 if such assault is committed at such individual's place of
32 employment or in the course of employment; reporting to
33 work in an intoxicated condition, or being intoxicated
34 while at work; arson, theft, larceny, fraud or embezzle-
35 ment in connection with his work; or any other gross mis-
36 conduct; he shall be and remain disqualified for benefits
37 until he has thereafter worked for at least thirty days in
38 covered employment.

(3) For the week in which he failed without good cause
39 to apply for available suitable work, accept suitable work
40 when offered, or return to his customary self-employment
41 when directed to do so by the commissioner, and for the
42 four weeks which immediately follow and for such an
43 additional period as any offer of suitable work shall con-
44 tinue open for his acceptance, and his maximum benefit
45 amount shall be reduced by an amount equal to his weekly
46 benefit rate times the number of weeks of disqualification.
47 However, if the claimant returns to work in covered em-
48 ployment during his benefit year, the maximum benefit
49 amount shall be increased by the amount of the decrease
50 imposed under the disqualification.

(4) For a week in which his total or partial unemploy-
51 ment is due to a stoppage of work which exists because of
52 a labor dispute at the factory, establishment, or other
53 premises at which he was last employed, unless the com-
54 missioner is satisfied that he was not (one) participating,
55 financing, or directly interested in such dispute, and (two)
56 did not belong to a grade or class of workers who were
57 participating, financing, or directly interested in the labor
58 dispute which resulted in the stoppage of work. No dis-
59 qualification under this subsection shall be imposed if the
60 employees are required to accept wages, hours or condi-
61 tions of employment substantially less favorable than
62 those prevailing for similar work in the locality, or if em-
63 ployees are denied the right of collective bargaining
64 under generally prevailing conditions, or if an employer
65 shuts down his plant or operation or dismisses his em-
66 ployees in order to force wage reduction, changes in hours
67 or working conditions.
70 (5) For a week with respect to which he is receiving
71 or has received:
72 (a) Wages in lieu of notice or payments under any form
73 of a separation wage plan.
74 (b) Compensation for temporary total disability under
75 the workmen’s compensation law of any state or under a
76 similar law of the United States.
77 (c) Unemployment compensation benefits under the
78 laws of the United States or any other state.
79 (6) For the week in which an individual has volun-
80 tarily quit employment to marry or to perform any mari-
81 tal, parental or family duty, or to attend to his or her per-
82 sonal business or affairs, and until the individual returns
83 to covered employment and has been employed in covered
84 employment at least thirty working days.
85 (7) For the week in which an individual:
86 (a) Voluntarily quit her employment because of preg-
87 nancy, whether or not upon a physician’s advice, and until
88 she returns to covered employment and has been em-
89 ployed therein at least thirty working days; except that
90 such disqualification shall last no longer than six weeks
91 subsequent to the birth of her child, provided such indi-
92 vidual furnishes to the department a certificate from a
93 physician that she is physically able to work;
94 (b) Was discharged or laid off from her employment
95 because of pregnancy and until she returns to covered em-
96 ployment and has been employed therein at least thirty
97 working days; except that such disqualification shall last
98 no longer than six weeks prior to and six weeks subse-
99 quent to the date of birth of the child, provided such in-
100 dividual furnishes to the department certificates from a
101 physician that she is physically able to work.
102 (8) For each week in which an individual is unem-
103 ployed because, having voluntarily left employment to
104 attend a school, college, university, or other educational
105 institution, he is attending such school, college, university,
106 or other educational institution, or is awaiting entrance
107 thereto or is awaiting the starting of a new term or session
108 thereof, and until the individual returns to covered em-
109 ployment.
(9) For each week in which he is unemployed because of his request, or that of his duly authorized agent, for a vacation period at a specified time that would leave the employer no other alternative but to suspend operations.

(10) For each week in which he is receiving or has received remuneration in the form of an annuity, pension, or other retirement pay, from an employer or from any trust or fund contributed to by an employer. But if such remuneration for any week is less than the benefits which would otherwise be due him for such week under this chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration: Provided, That if such amount of benefits is not a multiple of one dollar, it shall be computed to the next higher multiple of one dollar: Provided further, That there shall be no disqualification if in the individual’s base period there are no wages which were paid by the employer paying such remuneration, or by a fund into which the employer has paid during said base period. Claimant may be required to certify as to whether or not he is receiving or has received remuneration in the form of an annuity, pension, or other retirement pay from an employer or from a trust fund contributed to by an employer.

(11) For each week in which he knowingly made a false statement or representation knowing it to be false or knowingly failed to disclose a material fact in order to obtain or increase a benefit under this article. For each such week of disqualification he shall be disqualified an additional five weeks and his maximum benefit amount shall be reduced by an amount equal to five times his weekly benefit rate. Such five weeks disqualification periods are to run consecutively beginning with the first week in which it is determined a fraudulent claim was filed: Provided, That an individual shall not be disqualified under this subsection for a period of more than fifty-two consecutive weeks: Provided further, That disqualification under this subsection shall not preclude prosecution under article ten, section seven.

(12) For the purposes of this section an employer’s account shall not be charged under any of the following
151 conditions: When benefits are paid for unemployment
152 immediately after the expiration of a period of disqualifi-
153 cation for (a) leaving work voluntarily without good
154 cause involving fault on the part of the employer, (b) dis-
155 charge for any of the causes set forth in subsection (2)
156 of this section, (c) failing without good cause to apply for
157 available suitable work, accept suitable work, when
158 offered, or return to his customary self-employment when
159 directed to do so by the commissioner.

Sec. 4. Individual Not Disqualified by Receiving Vocati-
2 onal Training.—Notwithstanding any other provision in
3 this act, no individual shall be disqualified from obtains-
4 ing unemployment compensation benefits because of his
5 receiving training as part of an area vocational program,
6 or similar program, which has as its object the training
7 of unemployed individuals in new occupational skills:
8 Provided, That such individual’s training and training
9 institution are approved by the commissioner, and pro-
10 vided such individual produces evidence of his continued
11 attendance and satisfactory progress at such training in-
12 stitution when requested to do so by the commissioner.

Sec. 5. Suitable Work.—In determining whether work is
2 suitable for an individual, the commissioner shall consider:
3 (1) The degree of risk involved to the individual’s
4 health, safety, and morals.
5 (2) The individual’s physical fitness and prior training.
6 (3) His experience and prior earnings.
7 (4) His length of unemployment.
8 (5) His prospects of securing local work in his cus-
9 tomary occupation.
10 (6) The distance of the available work from his resi-
11 dence: Provided, however, That the distance from his
12 new residence shall not be considered in determining
13 suitable work if such distance from available work was
14 created as the result of the individual voluntarily chang-
15 ing his residence to a locality other than that locality
16 in which he resided at the time he voluntarily quit his
17 last employment without good cause involving fault on
18 the part of the employer.
Sec. 6. Suitable Work; Further Requirements.—Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied to an individual, otherwise eligible, for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.
(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.
(3) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Sec. 7. Disqualification in Case of Labor Dispute; Exception.—In case separate branches of work commonly conducted as separate businesses are conducted in separate departments on the same premises, each department shall, for the purposes of subsection four, section three, be treated as a separate establishment.

Sec. 8. Payment of Benefits.—Benefits shall become payable from the fund twenty-four months after the first day when payments first accrue.

Benefits shall be payable only with respect to unemployment occurring after expiration of such twenty-four months.

Sec. 9. Place of Payment. — Benefits shall be paid through employment offices or, if the commissioner by rules so prescribes, through employment security offices, in accordance with such regulations as the commissioner shall prescribe.

Sec. 10. Benefit Rate; Total Unemployment.—Each eligible individual who is totally unemployed in any week shall be paid benefits with respect to that week at the weekly rate appearing in column (C) in Table A in this paragraph, on the line on which in column (A) there is indicated the employee’s wage class, except as otherwise provided under the term “total and partial unemploy-
ment” in section three, article one of this chapter. The employee’s wage class shall be determined by his base period wages as shown in column (B) in Table A. The right of an employee to receive benefits shall not be prejudiced nor the amount thereof be diminished by reason of failure by an employer to pay either the wages earned by the employee or the contribution due on such wages. An individual who is totally unemployed but earns in excess of ten dollars as a result of odd-job or subsidiary work in any benefit week shall be paid benefits for such week in accordance with the provisions of this chapter pertaining to benefits for partial unemployment. The provisions of this section shall apply to all benefit weeks occurring in benefit years beginning after the effective date of this act; for benefit weeks occurring in benefit years beginning prior thereto the provisions then in effect shall apply.

**TABLE A**

<table>
<thead>
<tr>
<th>Wage Class</th>
<th>Wages in Base Period</th>
<th>Weekly Benefit Rate</th>
<th>Maximum Benefit in Benefit Year for Total and/or Partial Unemployment</th>
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<tr>
<td>(Column A)</td>
<td>(Column B)</td>
<td>(Column C)</td>
<td>(Column D)</td>
</tr>
<tr>
<td>Under $700.00</td>
<td>700.00- 799.99</td>
<td>$12.00</td>
<td>$312.00</td>
</tr>
<tr>
<td>1</td>
<td>800.00- 899.99</td>
<td>13.00</td>
<td>338.00</td>
</tr>
<tr>
<td>2</td>
<td>900.00- 999.99</td>
<td>14.00</td>
<td>364.00</td>
</tr>
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<td>3</td>
<td>1000.00-1149.99</td>
<td>15.00</td>
<td>390.00</td>
</tr>
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<td>468.00</td>
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<td>9</td>
<td>1900.00-2049.99</td>
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<td>2050.00-2199.99</td>
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<td>29.00</td>
<td>754.00</td>
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<tr>
<td>18</td>
<td>3000.00-3099.99</td>
<td>30.00</td>
<td>780.00</td>
</tr>
</tbody>
</table>
EMPLOYMENT SECURITY

Sec. 11. Benefit Rate; Partial Unemployment.—An eligible individual who is partially unemployed in any week shall, upon claim therefor filed within such time and in such manner as the commissioner may by regulation prescribe, be paid benefits for such partial unemployment in an amount equal to his weekly benefit rate, as determined in accordance with section ten of this article, less that part of wages from any source payable to him with respect to such week which is in excess of ten dollars: Provided, That such amount of benefits if not a multiple of one dollar shall be computed to the next higher multiple of one dollar. Such partial benefits shall be paid to such individual for the week for which he is claiming benefits without regard to the provisions of subsections one and four of section one of this article.

Sec. 12. Suspension of Partial Benefit Rights.—If at any time the unemployment compensation fund, including the trust fund, clearing account and benefit account, and excluding therefrom an amount, estimated by the commissioner, equal to the sum of the benefit liabilities then accrued and unpaid, shall fall below the sum of five million dollars, the commissioner, with the concurrence of a majority of the advisory council, and with the consent and approval of the governor, may suspend the right to receive benefit for periods of partial unemployment not then completed, and no right to benefit for periods of partial unemployment completed or occurring during the period of such suspension shall then or thereafter accrue. At any time subsequent to such suspension the commissioner, with the concurrence of a majority of the advisory council, and with the consent and approval of the governor,
may rescind, and whenever the unemployment compensation fund, including the trust fund, clearing account and benefit account, and excluding therefrom an amount, estimated by the commissioner, equal to the sum of the benefit liabilities then accrued and unpaid, reaches the sum of ten million dollars, the commissioner shall rescind such suspension as to periods of partial unemployment not then completed.

Sec. 13. Computation of Wage Credits; Determination of Maximum Benefits.—The commissioner shall compute wage credits for each individual by crediting him with the wages paid to him for employment by employers during his base period. The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed the amount appearing in column (D) on line indicating individual’s wage class, of Table A, in this article hereinafore contained.

Sec. 14. Payment of Benefits upon Decease of Claimant. —Accrued benefits due and unpaid on claims filed prior to decease of a claimant may, in the discretion of the commissioner, be paid, without letters of administration, to the surviving spouse, children, or parents of the deceased, in the order of priority enumerated.


Section 5-a. Special administration fund.

Section 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 commissioner 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 commissioner for expenditures consistent with this chapter: Provided, (1) That not more than fifty thousand dollars shall be expended from said fund in any fiscal year for purposes (a) and (b); (2) that at the beginning of each calendar quarter the commissioner shall estimate the amount that may be required in that quarter for refunds of interest erroneously collected; (3) that thereupon the excess, if any, over the amounts provided to be expended under this section shall be paid into the unemployment compensation trust fund.

CHAPTER 68
(House Bill No. 567—By Mr. Kidd)

[Passed March 9, 1963; in effect from passage. Approved by the Governor.] AN ACT to amend and reenact section nine-a, article four, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to cancellations of oil and/or gas leases for nonpayment of delay rental after demand therefor.

Be it enacted by the Legislature of West Virginia:
That section nine-a, article four, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Article 4. Covenants.
Section 9-a. Cancellation of oil and/or gas leases for nonpayment of delay rental after demand therefor, and barring any action or proceeding in the courts of this state for the purpose of enforcing or perpetuating during the term thereof any oil and/or gas lease heretofore executed for the nonpayment of delay rental after demand therefor.

Section 9-a. Cancellation of Oil and/or Gas Leases for Nonpayment of Delay Rental after Demand Therefor,
and Barring Any Action or Proceeding in the Courts of This State for the Purpose of Enforcing or Perpetuating during the Term Thereof Any Oil and/or Gas Lease Here- tofore Executed for the Nonpayment of Delay Rental after Demand Therefor.—Except in the case where operations for the drilling of a well are being conducted there- under, any undeveloped lease for oil and/or gas in this state hereafter executed in which the consideration there- in provided to be paid for the privilege of postponing ac- tual drilling or development or for the holding of said lease without commencing operations for the drilling of a well, commonly called delay rental, has not been paid when due according to the terms of such lease, or the terms of any other agreement between lessor and lessee, shall be null and void as to such oil and/or gas unless pay- ment thereof shall be made within sixty days from the date upon which demand for payment in full of such delay rental has been made by the lessor upon the lessee there- in, as hereinafter provided, except in such cases where a bona fide dispute shall exist between lessor and lessee as to any amount due under such lease.

No person, firm, corporation, partnership or association shall maintain any action or proceeding in the courts of this state for the purpose of enforcing or perpetuating during the term thereof any lease heretofore executed covering oil and/or gas, as against the owner of such oil and/or gas, or his subsequent lessee, if such person, firm, corporation, partnership or association has failed to pay to the lessor such delay rental in full when due according to the terms thereof, for a period of sixty days after demand for such payment has been made by the lessor upon such lessee, as hereinafter provided.

The demand for payment referred to in the two pre- ceding paragraphs shall be made by notice in writing and shall be sufficient if served upon such person, firm, partnershio, association, or corporation whether domestic or foreign, whether engaged in business or dissolved, by United States registered mail, return receipt requested, to the lessee's last known address.

A copy of such notice, together with the return receipt attached thereto, shall be filed with the clerk of the coun-
ty court in which such lease is recorded, or in which such
oil and/or gas property is located in whole or in part, and
upon payment of a fee of fifty cents for each such lease,
said clerk shall permanently file such notice alphabetically
under the name of the first lessor appearing in such
lease and shall stamp or write upon the margin of the rec-
ord in his office of such lease hereafter executed the words
"cancelled by notice"; and as to any such lease executed
before the enactment of this statute said clerk shall file
such notice as hereinbefore provided and shall stamp or
write upon the margin of the record of such lease in his
office the words "enforcement barred by notice."

The word "lessor" shall include the original lessor, as
well as his or its successors in title to the oil and/or gas
involved. The word "lessee" shall include the original
lessee, his or its assignee properly of record at the time
such demand is made, and his or its successors, heirs, or
personal representatives. No assignee of such lease whose
assignment is not recorded in the proper county shall be
heard in any court of this state to attack the validity or
sufficiency of the notice hereinbefore mentioned.

The continuation in force of any such lease after de-
mand for and failure to pay such delay rental as herein-
before set forth is deemed by the Legislature to be op-
posed to public policy and against the general welfare. If
any part of this section shall be declared unconstitutional
such declaration shall not affect any other part thereof.

CHAPTER 69
(House Bill No. 49—By Mr. Ford)

[Passed February 8, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article seven,
chapter thirty-six of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to
gifts to minors act.
Be it enacted by the Legislature of West Virginia:

That section one, article seven, chapter thirty-six 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.

Section 1. Definitions.—In this article, unless the context otherwise requires:

(a) An “adult” is a person who has attained the age of twenty-one years.

(b) A “bank” is a bank, trust company, national banking association, savings bank, industrial bank, building and loan association or federal savings and loan association.

(c) A “broker” is a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes a person lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business.

(d) “Court” means the circuit court.

(e) “The custodial property” includes:

(1) All securities and money under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this article;

(2) The income from the custodial property; and

(3) The proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment or other disposition of such securities, money and income.

(f) A “custodian” is a person so designated in a manner prescribed in this article.

(g) A “guardian” of a minor includes the general guardian, guardian, tutor or curator of his property, estate or person.
An "issuer" is a person who places or authorizes the placing of his name on a security (other than as a transfer agent) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person.

A "legal representative" of a person is his executor or the administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate.

A "member" of a "minor's family" means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption.

A "minor" is a person who has not attained the age of twenty-one years.

A "security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

A "transfer agent" is a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities.

A "trust company" is a bank authorized to exercise trust powers in the state.
AN ACT to amend and reenact sections four and twenty-four, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state fire marshal's office and funds to pay the salaries and expenses incidental to the operation thereof.

Be it enacted by the Legislature of West Virginia:

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

Article 3. State Fire Marshal; Protection against Fire.

Section 4. Salary of fire marshal; employment of assistants and clerks; expenses.

24. Fund for maintenance of office of state fire marshal.

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 enforcement of the provisions of this article and may incur such expenses as may be necessary in the performance of the duties of his office, including necessary traveling expenses, not to exceed such sums as are available for the payment of the salaries and expenses of the state fire marshal's office pursuant to the provisions of section twenty-four of this article.

Sec. 24. Fund for Maintenance of Office of State Fire Marshal.—For the purpose of maintaining the office of state fire marshal and paying the expenses incidental thereto every insurance company other than life doing business in this state, except farmers' mutual fire insurance companies, shall pay to the state fire marshal an-
7 nually on or before the first day of March, in addition
8 to the taxes now required by law to be paid by such com-
9 panies, one half of one per cent of the net direct premium
10 receipts of such companies on insurance against the
11 hazard of fire and on that portion of all other net direct
12 premiums reasonably applicable to insurance against the
13 hazard of fire which are included in other coverages, and
14 received by it for insurance on property or risks in this
15 state during the calendar year next preceding as shown
16 by their annual statement under oath to the insurance
17 department. The money so received by the state fire
18 marshal shall be paid by him into the treasury where it
19 shall be set aside as a special fund for the maintenance
20 of the office of state fire marshal and the expenses inci-
21 dental thereto. The salaries of the fire marshal, deputy
22 fire marshal, assistant fire marshals, and other employees
23 of the fire marshal's office, and the expense of operation
24 and maintenance of such office, shall be payable only
25 from the special fund provided for in this section, or
26 from any surplus funds available from the insurance
27 commissioner's fund created by chapter thirty-three, ar-
28 ticle three, section thirteen of this code, or provided by
29 appropriation or contribution.
30 In the event of a controversy as to the proper deter-
31 mination of the premium base on which this tax is to be
32 computed, a hearing may be had by said fire marshal on
33 the application of any interested person, corporation or
34 association, which hearing shall be held after reasonable
35 notice. Appeal from any finding or holding of said fire
36 marshal may be by petition to the circuit court of Kanawha county within thirty days of such finding or holding.

CHAPTER 71

(House Bill No. 525—By Mr. Poindexter and Mr. Corder)

[Passed March 6, 1913; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article one, chapter sixteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to authorization of the state department of health, division of dental health, to assume direction and supervision of dental services in state institutions.

Be it enacted by the Legislature of West Virginia:

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

**Article 1. State Department of Health.**

Section 10. Direction and Supervision of Dental Services.—The state department of health shall have the advisory medical supervision of Denmar, Berkeley Springs, Pinecrest, Hopemont, and all other state sanitariums for the treatment of tuberculosis or chronic diseases; and Fairmont and Welch emergency hospitals; and the department of public institutions shall have the control of the business and fiscal affairs thereof.

The director of the bureau of tuberculosis of the state department of health, under the supervision of the state board of health shall encourage measures for the suppression of tuberculosis, such as clinics, camps, open-air schools, sanitariums, district nursing, anti-tuberculosis societies, diffusion of knowledge and other means.

The state department of health through its division of dental health is authorized by the reenactment of this section to assume the direction and supervision of the dental services of all of the state institutions now directed and supervised by the department of public institutions, and dental services of all state mental hospitals now under the direction and supervision of the department of mental health.

The department of public institutions and the department of mental health are hereby authorized to transfer the funds of their respective departments budgeted and approved by the state Legislature for dental services to the state department of health, division of dental health budget, to provide dentists, dental hygienists, other personnel and for the purchase of equipment and supplies to provide dental services for this population group.
31 The state department of health, division of dental health, is hereby authorized to receive such funds as transferred by the department of public institutions and the department of mental health to be added to other state or federal funds now being used by the state department of health, division of dental health, for general dental health services.

CHAPTER 72

(House Bill No. 110—By Mr. Brotherton)

(Passed February 11, 1963; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-b, relating to autopsies on bodies of deceased persons in the interest of medical science.

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 adding thereto a new article, designated article four-b, to read as follows:

Article 4-b. Autopsies on Bodies of Deceased Persons.

Section 1. Autopsy on Body of Deceased Persons in Interest of Medical Science; Who May Perform; Written Consent Required; Who May Give Consent.—In case of the death of any person in the state of West Virginia, the attending physician, or if there be none, any physician, if he deems it advisable in the interest of medical science, may perform or cause to be performed an autopsy on the body of such deceased person without liability therefor, provided consent to such autopsy, in writing, is first obtained from (1) the surviving spouse
of deceased; (2) if there be no surviving spouse, then
any child of deceased over the age of twenty-one years:
Provided, That the child’s permission shall not be valid,
if any other child of the deceased over the age of twenty-
one years objects prior to said autopsy and said objection
shall be made known in writing to the physician who is to
perform the autopsy; (3) if there be no surviving spouse,
or any child of deceased over the age of twenty-one
years, then the mother or father of deceased; (4) if there
be no surviving spouse, nor any child over the age of
twenty-one years, nor mother or father, then the duly
appointed and acting fiduciary of the estate of the de-
ceased; or (5) if there be no surviving spouse, nor any
child over the age of twenty-one years, nor mother or
father, nor duly appointed and acting fiduciary of the
estate of deceased, then the person, firm, corporation or
agency legally responsible for the financial obligation in-
curred in disposing of the body of deceased.

In the event the spouse, child or parent of deceased
be mentally incompetent then the person authorized to
consent to such autopsy shall be the next in the order
of priority hereinabove defined.

CHAPTER 73
(House Bill No. 192—By Mrs. Drewry, by request)

[Passed February 18, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to amend and reenact sections one, four and
twelve, article five-b, chapter sixteen of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, relating to the licensing of hospitals and similar
institutions.

Be it enacted by the Legislature of West Virginia:
That sections one, four and twelve, article five-b, chapter
sixteen of the code of West Virginia, one thousand nine hun-
dred thirty-one, as amended, be amended and reenacted to
read as follows:
Article 5-b. Hospitals and Similar Institutions.

Section 1. Hospitals and Other Institutions Affected.—No person, partnership, association, corporation, nor any local governmental unit or any division, department, board or agency thereof shall establish, conduct, or maintain in the state of West Virginia any hospital, sanatorium, rest home, nursing home, or other institution, having five or more beds, for the hospitalization or care of the sick or injured or for the care of any human being requiring or receiving chronic or convalescent care without first obtaining a license therefor in the manner hereinafter provided. Hospitals operated by the federal government or the state government shall be exempt from the provisions of this article.

Hospital, sanatorium, rest home, nursing home, and other related institutions within the meaning of this article, shall mean any institution, place, building, or agency in which an accommodation of five or more beds is maintained, furnished, or offered for the hospitalization of the sick or injured or care of any person requiring or receiving chronic or convalescent care: Provided, That nothing contained in this article shall apply to hotels or other similar places that furnish to their guests only board and room, or either of them: Provided, however, That the hospitalization, care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household or his or her spouse, shall not be deemed to constitute the premises a hospital, sanatorium, rest home, nursing home or other related institution, within the meaning of this article.

Nothing in this article shall authorize any person, partnership, association, corporation, or any local governmental unit or any division, department, board or agency thereof to engage in any manner in the practice of medicine, as defined by law. This article shall not be construed
37 to restrict or modify any statute pertaining to the place-
38 ment or adoption of children.

Sec. 4. License Fees.—The application of any person, 
2 partnership, association, corporation or local govern-
3 mental unit for a license to operate a hospital, sanatorium, 
4 rest home, nursing home, or related institution within 
5 the meaning of this article shall be accompanied by a fee 
6 to be determined by the number of beds available for 
7 patients, according to the following schedule of fees: 
8 Those with five beds but less than fifty beds shall pay a 
9 fee of twenty dollars; those with fifty beds or more and 
10 less than one hundred beds shall pay a fee of thirty dol-
11 lars; those with one hundred beds or more and less than 
12 two hundred beds shall pay a fee of forty dollars; and 
13 those with two hundred beds or more shall pay a fee of 
14 fifty dollars. No such fee shall be refunded. All licenses 
15 issued under this article shall expire on the thirtieth day 
16 of June following their issuance, shall be on a form pre-
17 scribed by the state department of health, shall not be 
18 transferable or assignable, shall be issued only for the 
19 premises named in the application, shall be posted in a 
20 conspicuous place on the licensed premises, and may be 
21 renewed from year to year upon application, investiga-
22 tion, and payment of the license fee, as in the case of the 
23 procurement of an original license: Provided, That any 
24 such license in effect on the thirtieth day of June of any 
25 year, for which timely application for renewal, together 
26 with payment of the proper fee, has been made to the 
27 state department of health in conformance with the pro-
28 visions of this article and the rules and regulations issued 
29 thereunder, and prior to the expiration date of such li-
30 cense, shall continue in effect until (a) the thirtieth day 
31 of June next following the expiration date of such license, 
32 or (b) the date of the revocation or suspension of such 
33 license pursuant to the provisions of this article, or (c) 
34 the date of issuance of a new license, whichever date 
35 first occurs. All fees received by the state department of 
36 health under the provisions of this article shall be paid 
37 into the state treasury general revenue fund.

Sec. 12. Injunction; Severability of Article.—Notwith-
standing the existence or pursuit of any other remedy, the
department may, in the manner provided by law, main-
tain an action in the name of the state for injunction
against any person, partnership, association, corporation,
or any local governmental unit, or any division, depart-
ment, board or agency thereof to restrain or prevent the
establishment, conduct, management or operation of any
hospital, sanatorium, rest home, nursing home or other
institution having five or more beds for the hospitalization
or care of the sick or injured or for the care of any human
being requiring or receiving chronic or convalescent care
without first obtaining a license therefor in the manner
hereinbefore provided.

If any part of this article shall be declared unconstitu-
tional, such declaration shall not affect any other part
thereof.

CHAPTER 74
(House Bill No. 264—By Mr. Bias and Mr. D’Aurora)

(Passed March 9, 1963; in effect ninety days from passage. Approved by the
Governor.)

AN ACT to amend and reenact sections seventeen and
twenty-three, article eight-a, chapter sixteen of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended, relating to certain offenses under the uniform
narcotic drug act and prescribing penalties for violation
of such act.

Be it enacted by the Legislature of West Virginia:

That sections seventeen and twenty-three, article eight-a,
chapter sixteen of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, be amended and re-
enacted to read as follows:

Article 8-a. Narcotic Drugs.

Section
17. Obtaining narcotic drugs by fraud, etc.; penalty.
23. Penalties for violation.
Section 17. Obtaining Narcotic Drugs by Fraud, etc.; Penalty.—(1) No person shall obtain or attempt to obtain a narcotic drug, or procure or attempt to procure the administration of a narcotic drug, (a) by fraud, deceit, misrepresentation, or subterfuge; or (b) by forgery or alteration of a prescription or of any written order; or (c) by the concealment of a material fact; or (d) by the use of a false name or the giving of a false address.

(2) Information communicated to a physician in an effort to unlawfully procure a narcotic drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(3) No person shall wilfully make a false statement in any prescription, order, report, or record, required by this article.

(4) No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, pharmacy owner, physician, dentist, veterinarian, or other authorized person.

(5) No person shall make or utter any false or forged prescription or false or forged written order.

(6) No person shall affix any false or forged label to a package or receptacle containing narcotic drugs.

(7) The provisions of this section shall apply to all transactions relating to narcotic drugs under the provisions of section eight of this article, and in the same way as they apply to transactions under all other sections.

(8) Whoever violates any provision of this section shall be guilty of a misdemeanor, and, upon conviction for the first offense, shall be fined not less than fifty nor more than one hundred dollars; and, upon conviction for a subsequent offense shall be fined not less than one hundred nor more than two hundred dollars and, in addition to such fine, any person so convicted may be imprisoned in the county jail for not more than six months.

Sec. 23. Penalties for Violation.—Whoever violates any provision of this article, where punishment is not otherwise provided, shall be guilty of a felony, and, upon con-
viction, shall be fined not more than one thousand dollars and be imprisoned in the penitentiary for not less than two nor more than five years. For a second offense, or if, in case of a first conviction of violation of any provision of this article, the offender shall previously have been convicted of any violation of the laws of the United States or of any other state, territory or district relating to narcotic drugs or marihuana, the offender shall be fined not more than five thousand dollars and be imprisoned in the penitentiary for not less than five nor more than ten years. For a third or subsequent offense, or if the offender shall previously have been convicted two or more times in the aggregate of any violation of the law of the United States or of any other state, territory or district relating to narcotic drugs or marihuana, the offender shall be fined not more than ten thousand dollars and be imprisoned in the penitentiary not less than ten nor more than twenty years.

Except in the case of conviction for a first offense in violation of the provisions of this article, and except where punishment is otherwise provided, the imposition or execution of sentence shall not be suspended and probation or parole shall not be granted until the minimum imprisonment herein provided for the offense shall have been served. The court shall in each case fix and determine the exact length of sentence to be served for each conviction.

CHAPTER 75

(House Bill No. 283—By Mr. White)

(Passed March 7, 1963; in effect from passage. Approved by the Governor.)

AN ACT to amend article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated section three-a, relating to the removal of the members of a public service district board, and section eighteen-a, re-
lating to the sale, lease or rental of a water system by a public service district and the disbursement of money received for the sale, lease or rental of said system.

Be it enacted by the Legislature of West Virginia:

That article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections three-a and eighteen-a, to read as follows:


Section 3-a. Removal of Members of Public Service District Board.—The county court or any other appointive body creating or establishing a public service district under the provisions of this article shall have the authority to remove any member of the governing board thereof for any violation of any provisions of this article, for any misconduct in office or upon written petition signed by a majority of the registered voters residing within the public service district: Provided, however, That such appointee shall only be removed after a full hearing of any complaint presented against him and after due notice of such hearing.

Sec. 18-a. Sale, Lease or Rental of Water System by District.—In any case where a public service district shall own a water system, and all the members of the public service board thereof shall deem it for the best interests of the district to sell, lease or rent such water system to any municipally or privately owned water system, or to any water system owned by an adjacent public service district, said board shall have full power and authority to so sell, lease or rent such water system upon such terms and conditions as said board shall, in its discretion, consider in the best interests of the district: Provided, however, That such sale, leasing or rental shall be made only upon approval by the public service commission of West Virginia.
15 In the event of any such sale, the proceeds thereof, if any, remaining after payment of all outstanding bonds and other obligations of the district shall be ratably distributed to any persons who have made contributions in aid of construction of such water system, such distribution not to exceed the actual amount of any such contribution, without interest, and any balance of funds thereafter remaining shall be paid to the county court of the county in which the major portion of such water system is located to be placed in the general funds of such county court.

CHAPTER 76
(Com. Sub. for Senate Bill No. 117, etc.—Originating in the Senate Committee on the Judiciary)

[Passed February 20, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, five and six, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the policy of the state concerning air pollution control; the purpose of the air pollution control act; the powers, duties and authority of the air pollution control commission; the rendering of legal services to such commission; the method and manner of adopting and promulgating rules and regulations of such commission, and notice and hearing concerning same; notice of alleged violations of the air pollution control act and of complaints before the air pollution control commission; the method and manner of serving such notice; hearings thereon; the factors to be considered at any such hearing; the orders of such commission; service of such orders; petitions to modify or vacate any such order; proceedings on such petitions; service of any confirming, modifying or vacating order; when orders become final and conclusive; recording and transcribing all proceedings at any such hearing; and specifying that a hear-
ing on a complaint can be held by no less than two members of the air pollution control commission, the transcript of such hearing to be reviewed by such commission as a whole.

Be it enacted by the Legislature of West Virginia:

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

Article 20. Air Pollution Control.

Section 1. Declaration of Policy and Purpose.—It is hereby determined and declared to be the policy of the state of West Virginia to maintain such a reasonable degree of purity of the air resources of the state as shall be technically feasible, economically reasonable, and necessary for the protection of the health, the general welfare and the property of the people of the state. The measures for the accomplishment of this purpose shall not unreasonably obstruct the attraction, development and expansion of business, industry and commerce within the state. The program for the control of air pollution under this article shall be sought to be accomplished by a maximum of cooperation and conciliation among all the parties concerned. All powers herein conferred upon the air pollution control commission shall be exercised solely to effectuate the policy declared in this section. It is further hereby determined and declared to be the policy of the state of West Virginia that all departments, agencies and other branches of the government of the state of West Virginia shall immediately take such steps concerning smoke and other impurities which are or may be emitted from any building, plant or other structure under the supervision and control of the departments, agencies and
other branches of such state government as are necessary to accomplish the purposes of this article.

Sec. 5. Same; Powers and Duties Generally; Rules and Regulations; Public Hearings.—The commission is hereby authorized and empowered:

(1) To develop ways and means for the regulation and control of pollution of the air of the state;

(2) To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries, and with affected groups in furtherance of the declared purposes of this article;

(3) To encourage and conduct such studies and research relating to air pollution and its control and abatement as the commission may deem advisable and necessary;

(4) To adopt and to promulgate reasonable regulations, not inconsistent with the provisions of this article, relating to the control of air pollution: Provided, That no rule or regulation of the commission shall specify the design of equipment, type of construction, or particular method which a person shall use to reduce the discharge of air pollutants, nor shall any such rule or regulation apply to any aspect of an employer-employee relationship;

(5) To enter orders requiring compliance with the provisions of this article and the regulations lawfully promulgated hereunder;

(6) To consider complaints, subpoena witnesses, administer oaths, make investigations, and hold hearings relevant to the promulgation of regulations and the entry of compliance orders hereunder;

(7) To encourage voluntary cooperation by municipalities, counties, industries and others in preserving the purity of the air within the state;

(8) To employ personnel, including specialists and consultants, purchase materials and supplies, and enter into contracts necessary, incident or convenient to the accomplishment of the purposes of this article;

(9) To enter at reasonable times upon any private or
public property for the purpose of investigating an alleged statutory air pollution: *Provided, however,* That no such investigation shall extend to information relating to secret processes or methods of manufacturing or production;

(10) Upon reasonable evidence of a violation of this article, which presents an imminent and serious hazard to public health, to give notice to the public or to that portion of the public which is in danger by any and all appropriate means;

(11) To cooperate with, receive and expend money from the federal government and other sources;

(12) To represent the state in any and all matters pertaining to plans, procedures and negotiations for interstate compacts in relation to the control of air pollution; and

(13) To appoint technical advisory councils from such areas of the state as it may determine. Each such council so appointed shall consist of not more than five members for each area so designated, at least two of whom shall be truly representative of industries operating within such area, and may advise and consult with the commission about all matters pertaining to the regulation, control and abatement of air pollution within such area.

The attorney general and his assistants and the prosecuting attorneys of the several counties shall render to the commission without additional compensation such legal services as the commission may require of them to enforce the provisions of this article.

No rule or regulation of the commission pertaining to the control, reduction or abatement of air pollution shall become effective until after at least one public hearing thereon shall have been held by the commission within the state. Notice to the public of the time and place of any such hearing shall be given by the commission at least thirty days prior to the scheduled date of such hearing by advertisement published once a week for two successive weeks in at least one daily newspaper of general circulation in the county wherein such hearing is to be held. Full opportunity to be heard shall be accorded to all persons in attendance and any person, whether or not in attendance at such hearing, may submit in writing his
views with respect to any such rule or regulation to the
commission within thirty days after such hearing. The
proceedings at the hearing before the commission shall
be recorded by mechanical means or otherwise as may be
prescribed by the commission. Such record of proceedings
need not be transcribed unless requested by an interested
party, in which event the prevailing rates for such tran-
scripts will be required from such interested party. The
commission may, in its discretion, solicit the comments
in writing of any person who may be affected by or in-
terested in such proposed rules and regulations.

Sec. 6. Notice of Alleged Violations; Hearings; Factors
Considered; Complaints Before the Commission and Pro-
cedure Thereon; Orders of Commission; Petitions to
Modify or Vacate Order; Confirming or Modifying Order;
When Order Final; Record of Proceedings.—If, from any
investigation made by it or from any complaint filed be-
fore it, the commission shall be of the opinion that there
is sufficient cause to believe that a person may be violat-
ing the provisions of this article, the commission may give
written notice to such person to appear before the com-
mission at a time and place, within the county wherein
the pollution is alleged to have originated, to be specified
in such notice, then and there to show cause, if any shall
exist, why said commission should not enter an order
finding that such person has violated the provisions of
this article and regulating or controlling the alleged pol-
lution. The said notice shall with reasonable particularity
specify the nature of the alleged air pollution which is
to be the subject of inquiry at such hearing. No such
hearing shall be held less than thirty days from the date
of said notice. Any such notice may be served and re-
turned in the same manner as a summons in a civil action
or may be served by sending a copy thereof by registered
mail addressed to the person or persons alleged to be
causing such pollution at his and/or its usual, or last
known, postoffice address. Any person to whom such
notice has been given may appear in person or by counsel
at the hearing and adduce evidence in answer to the
alleged violation.
In any proceeding under this article the commission shall consider all pertinent factors, including a balancing of the conflicting interests and equities involved, the availability and practicality of control devices, the physical and economic feasibility of eliminating, controlling or reducing the alleged pollution, the nature of the locality affected by the alleged pollution, the reasonableness of existing conditions and such other factors as may appear to the commission to be consonant with the policy declared in section one of this article.

For the purpose of holding a hearing on a complaint said hearing can be held by no less than two members of the commission who have been designated by the chairman, and the transcript from such hearing shall be reviewed by the commission for the purpose of issuing such orders as may be necessary.

Consistent with the evidence adduced at the hearing and a consideration of the aforesaid factors, the commission shall enter such order as in its opinion will best promote the declared policy of this article. Such order shall contain specific findings of fact with respect to all factors considered by the commission and shall require that the statutory air pollution, if any be found, be corrected within a reasonable period of time to be fixed therein. A true copy of such order shall be promptly served, either by service as a summons in a civil action or by registered mail as aforesaid, upon all persons substantially affected by such order. Within twenty days after service of such order, any person substantially affected thereby may file with the secretary of the commission a petition in writing requesting the commission to modify or vacate such order. The petition shall assign the grounds relied upon by the petitioner in support of a modification or vacation of such order. The commission shall thereupon reconsider its original order and shall, within twenty days after the filing of the petition, enter of record an order confirming, modifying or vacating the original order. A true copy of such order shall be promptly served upon all persons substantially affected thereby in the same manner as the original order was served. Any order of the commission entered hereunder shall become final and con-
clusive upon all persons affected thereby unless an appeal therefrom is taken in the manner provided in section seven of this article.

The proceedings at any such hearing shall be recorded by mechanical means or otherwise as may be prescribed by the commission: Provided, That the proceedings shall be taken by a stenographer appointed by the commission upon demand of any interested person. A copy of such transcript shall be furnished on demand to any person substantially affected upon payment of the fee prescribed therefor in the rules and regulations of the commission, such fee not to exceed that prescribed for transcripts in the circuit court.

CHAPTER 77

(House Bill No. 543—By Mr. Nuxum)

[Passed March 9, 1963; in effect ninety days from passage. Approved by the Governor.]
terms of said revenue bonds and the rights, security and remedies of the holders of said revenue bonds; and providing that such commission shall be subject to the jurisdiction of the public service commission.

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 adding thereto a new article, designated article twenty-one, to read as follows:


Section 1. Definitions.
2. West Virginia water development commission created; composition; appointment, confirmation and terms of members; vacancies.
3. Compensation and expenses of members of commission.
5. Commission authorized to acquire, construct, improve and operate water works systems.
6. Estimate of cost for acquisition, construction, etc., of system; resolution for issuance of revenue bonds; tax exemptions; interest; terms and conditions of bonds; mortgage lien and trust agreement; priority of payments from revenues; combination of projects.
7. Revenue bonds declared negotiable; redemption; form, denomination and execution of bonds; exchange or sale of bonds; additional bonds to cover deficiencies; temporary bonds; bonds eligible for deposit as collateral; condemnation not authorized.
8. Acquisitions by purchase.
9. Cost of works.
10. Bonds known as “West Virginia Water Revenue Bonds”; credit of state or political subdivision not pledged.
11. Combining systems for issuance of bonds.
12. Trust agreement to secure holders of bonds.
13. Deposit and disposition of funds; examination of accounts and books of commission.
14. Disposition of water works systems.
15. Commission constituted a body corporate and agency of the state.
16. Management and control of water works systems by commission.
17. Issuance of refunding bonds.
18. Jurisdiction of public service commission.
19. Construction of article.

Section 1. Definitions.—The following terms, whenever used or referred to in this article, shall have the following meanings unless a different meaning clearly appears from the context:

5. The term “commission” shall mean the West Virginia water development commission created by section two of this article.
8. The term “bonds” shall mean revenue bonds issued by
the commission pursuant to this article, including refunding revenue bonds.

The term "water works system" or "water works" as used in this article shall include a water supply, treatment and distribution system in its entirety, or any integral part thereof, including but not limited to mains, distribution lines, hydrants, meters, valves, standpipes, storage tanks, pumping stations, intakes, wells, impounding reservoirs, treatment plants, buildings, supplies, easements, rights of way, and all other property, real or personal, ordinarily used in connection with the operation of a water works system.

The term "public body" shall mean any municipality or other political subdivision, or any agency or instrumentality of such municipality or other political subdivision.

The term "publicly owned" shall mean owned by a municipality or other political subdivision, or public body.

Sec. 2. West Virginia Water Development Commission Created; Composition; Appointment, Confirmation and Terms of Members; Vacancies.—There shall be a state water development commission, to be known as the West Virginia water development commission, and the same is hereby made a body corporate, and is hereby declared to be an agency of the state of West Virginia. The commission shall consist of five members who shall be citizens of the state, appointed by the governor, by and with the advice and consent of the senate, for overlapping terms of five years, except that the original appointments shall be for terms of one, two, three, four and five years, respectively, and each subsequent term for a period of five years. For the purpose of purchasing any system or systems, the commission shall not enter into any binding contract or agreement nor sell any bonds herein provided for, nor enter into any other contract or agreement for the purchase or acquisition of any water system or systems until the members of such commission have been confirmed by the state senate: Provided, That not more than one member of the commission shall be selected from each congressional district, and that not more than three members shall be of the same political party.

The governor shall appoint all members of the commis-
Sec. 3. Compensation and Expenses of Members of Commission.—The compensation and expenses of members of the commission shall be fixed by resolution of the commission but shall not exceed the sum of twenty-five dollars per day for compensation for each member and the amount of the actual bona fide expenses of each member while actually engaged in the business of the commission and the compensation and expenses of each member shall not exceed in the aggregate the sum of four thousand dollars per annum for compensation and four thousand dollars per annum for bona fide expenses.

Sec. 4. Powers and Duties of Commission Generally.—The commission shall have power:

1. To sue and be sued, plead and be impleaded;
2. To have a seal and alter the same at pleasure;
3. To acquire, construct, improve and operate, in the name of the commission, by purchase or otherwise, water works systems wherever located in West Virginia, and to acquire rights, easements, franchises and permits necessary or convenient for the acquisition, construction, improvement and operation of water works systems: Provided, however, That the commission may not acquire water works systems which are now publicly owned;
4. To acquire by purchase, hold and dispose of real and personal property for any proper purpose;
5. To make by-laws for the management and regulation of its affairs;
6. To employ counsel, appoint officers, agents and employees and to fix their compensation, paying for the same from the income of the water works system or systems operated by the commission;
7. To renegotiate all contracts entered into by it whenever, due to a change in situation, it appears to the commission that its interest will be best served;
8. To fix and establish fees, rates and other charges
for the supply of water and the services and facilities of any water works system or systems owned and operated by the commission, and such fees, rates or other charges shall be subject to the rules and regulations of the public service commission. It shall be the mandatory duty of the commission to fix and establish such fees, rates or other charges, and to revise the same whenever necessary, as will always provide revenues in each year at least sufficient to pay the principal of and interest on all bonds issued by the commission, and reserves therefor, as the same shall become due in such year, together with the cost of the operation and maintenance of such water works system or systems in such year, and together with all other payments required in such year by the proceedings which authorized the issuance of such bonds, including reasonable margins for any of such purposes. Such fees, rates and other charges shall further comply with any covenants made by the commission with the holders of such bonds, including covenants prohibiting the reduction of such fees, rates or other charges except under the terms, conditions and limitations provided in such covenants with such bondholders;

9. To establish by resolution and enforce regulations relating to the billing and collecting of the fees, rates or other charges for the services and facilities of any water works system or systems, including penalties for the delinquent payment of such fees, rates or other charges and for the restoration of service after the same has been discontinued;

10. To shut off and discontinue the supply of water and the services and facilities of any water works system or systems for the failure of the users of such system or systems to pay such fees, rates or other charges as the same become due, and to make valid and legally binding covenants with the holders of such bonds as to the time, manner and method of the shutting off and discontinuance of the services and facilities of such system or systems for the failure to pay such fees, rates or other charges, and the penalties to be imposed for restoration of service upon the payment of such delinquent fees, rates
or other charges, which covenants shall be enforceable by
the holders of any of said bonds in any court of competent
jurisdiction;

11. To use and apply the revenues derived from
any water works system or systems for the reimburse-
ment of municipalities and other political subdivisions
and public bodies for any taxes which would have ac-
crued to such municipalities and other political subdivi-
sions and public bodies if such water works system or sys-
tems were privately owned and operated, under such
terms and conditions as shall be determined by the com-
mission: Provided, however, That all such payments shall
be subject to and comply fully with all terms, covenants
and provisions contained in any resolutions, trust agree-
ments or mortgages which authorized the issuance of any
bonds of the commission then outstanding;

12. To issue negotiable revenue bonds and to provide
for the rights of the holders thereof;

13. To enter on any lands and premises for the purpose
of making surveys and examinations; and

14. To do any and all things necessary or convenient
to carry out the powers given in this article.

Sec. 5. Commission Authorized to Acquire, Construct,
Improve and Operate Water Works Systems.—The com-
mission shall have authority to acquire any existing water
works system, or systems, in this state not now publicly
owned, to construct new water works systems, to con-
struct betterments and improvements to systems acquired
or constructed and to operate any and all water works
systems so acquired, constructed or improved: Provided,
however, That the commission shall not purchase or
acquire any water works system or water works, located
in any municipality in this state, unless the municipality
in which the same is located shall have a period of sixty
days within which to contract for the purchase or ac-
quision thereof, with the owner or owners thereof,
at the same price as the commission proposes to pur-
chase or acquire the same.

Sec. 6. Estimate of Cost for Acquisition, Construction,
etc., of System; Resolution for Issuance of Revenue Bonds;
Whenever the commission shall determine to acquire, construct or improve a water works system under the provisions of this article, it shall cause an estimate to be made of the cost thereof, and shall, by resolution, provide for the issuance of revenue bonds under the provisions of this article, which resolution shall set forth a brief description of the contemplated acquisition, construction or improvement, the estimated cost thereof, the rate or maximum rates of interest, the amount, time and place of payment of such bonds, and other information in connection with the issuance of the bonds. Such bonds shall be in such form and shall be issued in such manner, at such prices and upon such terms as the commission may by resolution specify, as provided in section seven hereof. All such bonds and the interest thereon and all properties and revenues and income derived from such water works systems, shall be exempt from all taxation by the state of West Virginia, or by any county, municipality, political subdivision or agency thereof. Such bonds shall bear interest at not more than six per centum per annum semi-annually, and shall be payable at such times, not exceeding forty years from their date, and at such place or places, within or without the state, as shall be prescribed in the resolution providing for their issuance. Such resolution shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired, constructed or improved, and the events of default and terms and conditions upon which such statutory mortgage lien may be foreclosed by bondholders or any trustee for such bondholders. Such statutory mortgage lien may be foreclosed in the same manner as a mortgage upon real property may be foreclosed under the laws of the state of West Virginia. Such resolution or any trust agreement or mortgage may pledge all or any part of the revenues derived from the water works system or systems then being acquired, constructed or improved, either alone or in combination with other water works systems then to be acquired or constructed or which have been theretofore...
or shall thereafter be acquired or constructed, for the pur-
pose of paying the principal of and interest on such bonds,
and reserves therefor and any other payments required
by such resolution or trust agreement or mortgage, and
may provide for the order and priority of the application
of such revenues between the payment of the principal of
and interest on such bonds and reserves therefor, and
the payment of the cost of the operation and maintenance
of such water works system or systems and reserves
therefor, and any other payments required by such resolu-
tion, trust agreement or mortgage. The commission may
also provide for such rank: and priority as to payment
from said revenues and in any other respect between any
bonds issued by the commission either between bonds of
the same issue or any other bonds theretofore or there-
after issued. The commission may acquire, construct or
improve more than one water works system at one time
and may, in its discretion, combine any two or more of
said systems for the purpose of financing, and may further
provide in any resolution, trust agreement or mortgage
for the financing of any water works system or systems,
or additions, extensions or improvements to any existing
water works system or systems, pursuant to such resolu-
tion, trust agreement or mortgage under such terms,
conditions and provisions as shall be contained in such
resolution, trust agreement or mortgage.

Sec. 7. Revenue Bonds Declared Negotiable; Redemp-
tion; Form, Denomination and Execution of Bonds; Ex-
change or Sale of Bonds; Additional Bonds to Cover De-
diciencies; Temporary Bonds; Bonds Eligible for Deposit
as Collateral; Condemnation Not Authorized.—All bonds
issued hereunder shall have and are hereby declared to
be and have all the qualities of negotiable instruments
under the law merchant and the negotiable instruments
law of the state of West Virginia; they may be made re-
demable at the option of the commission, at such price
and under such terms and conditions as the commission
may fix prior to the issuance of such bonds.
The commission shall determine the form of such bonds,
including coupons to be attached thereto to evidence the
right of interest payments, which bonds shall be signed
by the chairman and secretary of the commission, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of said chairman of the commission. The great seal of the state may be affixed to or reproduced or imprinted on said bonds, and the signatures on said bonds may be either manual or facsimile signatures: Provided, That the signature of either said chairman or secretary on said bonds of the commission shall be a manual signature. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes in like manner as if they had remained in office until such delivery. The commission shall fix the denomination of said bonds, the principal and interest of which shall be payable at the office of the sinking fund commission of the state of West Virginia, at the capitol of said state, or, at the option of the holder, at some bank or trust company within or without the state to be named in the bonds, in such medium as may be determined by the commission. The commission may provide for the registration of such bonds as to principal alone, and as to both principal and interest, under such terms and conditions as the commission may determine. The commission may exchange bonds, in whole or in part, for any water system or systems or water properties being acquired or for outstanding bonds in the case of refunding bonds, or may sell such bonds in such manner as it may determine to be for the best interest of the state, taking into consideration the financial responsibility of the purchaser, the terms and conditions of the purchase, and especially the availability of the proceeds of the bonds when required for payment of the cost of water works system or systems or water improvements to be constructed or acquired: Provided, however, That such exchange or sale shall be made at a price not lower than the price which will yield to the purchasers, or to the holders of outstanding bonds exchanged for refunding bonds, or to the owners of any water works system or systems or water properties exchanged for such bonds, net income at a rate of six per centum per annum
to the maturity date or average maturity date of such bonds on the moneys paid for such bonds, or the principal amount of outstanding bonds exchanged for refunding bonds, or the fair value of any water system or systems or water properties exchanged for such bonds, computed in such manner as the commission shall in its discretion determine. The proceeds of such bonds shall be deposited and checked out as provided by section thirteen of this article, and under such restrictions as the commission may provide. If the proceeds of such bonds, by error in calculation or otherwise, shall be less than the cost of acquisition or construction of the system or systems for which they are issued, or the improvements thereto, or if, after such acquisition or construction, the commission determines that additions, improvements or betterments thereto should be acquired or constructed, additional bonds may in like manner be issued to provide the amount of the deficiency or the cost of the additions, improvements or betterments, as the case may be, and, unless otherwise provided for in the trust agreement or mortgage hereinafter mentioned, shall be deemed to be of the same issue, and shall be entitled to payment from the same fund, without preference or priority, as the bonds before issued relating to the same system or systems. Prior to the preparation of definitive bonds, the commission may, under like restrictions, issue temporary bonds, with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. Such bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified and required by this article or by the constitution of the state.

Bonds issued under the authority of this article shall constitute securities eligible for deposit as collateral for all public deposits or funds.

Under no circumstances shall the commission have the right to exercise the power of eminent domain or condemnation.

Sec. 8. Acquisitions by Purchase.—The commission shall be under no obligation to accept and pay for any property purchased except from the funds provided
pursuant to this article. In event of the acquisition by
purchase, the commission may obtain and exercise an
option from the owner or owners of said property for
the purchase thereof, or may enter into a contract for the
purchase thereof, and such purchase may be made upon
such terms and conditions, and in such manner as the
commission may deem proper.

Sec. 9. Cost of Works.—The cost of the works shall be
deemed to include: The cost of acquisition or construction
thereof, the cost of all property, rights, easements, and
franchises deemed necessary or convenient therefor and
for the improvements determined upon as provided in this
article; interest upon bonds prior to and during construc-
tion or acquisition and for a reasonable period thereafter,
not exceeding two years; engineering and legal expenses;
expenses for estimates of cost and of revenues; expenses
for plans, specifications and surveys; fees for financial
services or advisors or consultants; other expenses neces-
sary or incident to determining the feasibility or prac-
ticability of the enterprise; administrative expense; and
such other expenses as may be necessary or incident to
the financing herein authorized and the construction or
acquisition of the works and the placing of the works in
operation and the performance of the things herein re-
quired or permitted in connection therewith.

Sec. 10. Bonds Known as “West Virginia Water Reve-
nue Bonds”; Credit of State or Political Subdivision Not
Pledged.—Water works system revenue bonds issued
under the provisions of this article shall be known as
“West Virginia Water Revenue Bonds” and shall not be
deemed to constitute a debt of the state or of any political
subdivision thereof or a pledge of the faith and credit of
the state or of any political subdivision thereof, but such
bonds shall be payable solely from the funds herein pro-
vided therefor from revenues. All such revenue bonds
shall contain on the face thereof a statement to the effect
that neither the state nor any political subdivision thereof
shall be obligated to pay the same or the interest thereon
except from revenues of the system or systems for which
they are issued, and that neither the faith nor the credit
nor the taxing power of the state or any political sub-
division thereof is pledged to the payment of the principal
of, or the interest on, such bonds.

Sec. 11. Combining Systems for Issuance of Bonds.—
The commission may provide, by said resolution author-
izing the issuance of the bonds or in the trust agreement
hereinafter referred to, for combining two or more water
works systems for the purpose of financing the acquisition
or construction of and improvements to such systems, or
any of them, and may also provide in said resolution or
in said trust agreement that additional bonds may there-
after 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 and/or trust agreement, for the
purpose of acquiring or constructing other water works
systems, or for the purpose of extending, improving or
bettering water works systems acquired or constructed by
the commission, when deemed desirable in the public in-
terest, such additional bonds, subject to any provisions
contained in such resolution or trust agreement, to be se-
cured and be payable from the revenues of such water
works system or systems equally with all other bonds
issued pursuant to said resolution without preference or
distinction between any one bond and any other bond by
reason of priority of issue, the identity of the water works
systems whose revenues were pledged to secure any one
bond or series of bonds, or otherwise.

Sec. 12. Trust Agreement to Secure Holders of Bonds.—
The commission may enter into an agreement or agree-
ments with any corporate trustee, in or out of the state,
having power and authority to act as trustee in a security
trust, as trustee, securing the bonds issued or which may
be issued pursuant to the resolution of the commission.
Such agreement, whether in the form of a trust agreement
only, or a trust agreement and a mortgage of any water
works system or systems, may contain such provisions for
protecting and enforcing the rights and remedies of the
bondholders as the commission considers reasonable and
proper, including, without limitation, covenants regard-
ing the duties of the commission in relation to the con-
struction, acquisition, improvement, operation, repair,
maintenance and insurance of the water works system or
systems, the revenues which are to pay the bonds, the cus-
tody, safeguarding and application by such trustee of the
proceeds of such bonds, the revenues derived from such
water works system or systems, and any other moneys of
the commission, and may provide that the water works
systems to be acquired, constructed or improved, shall be
contracted for, constructed, continuously operated and
paid for under the supervision and approval of consulting
engineers employed or designated by the commission and
satisfactory to the bondholders or their designated repre-
sentatives or nominees. Such agreement may set forth
the rights and remedies of bondholders and/or such trus-
tee, restricting the individual right of action of bondhold-
ers as is customary in trust indentures securing bonds and
debentures of corporations; may provide for the fore-
closure of any mortgage executed in connection therewith
in the manner provided in the laws of the state for the
foreclosure of mortgages on real property; may provide
for the appointment of a receiver by any court of com-
petent jurisdiction of any water works system or systems
on default of the commission to pay any principal of or in-
terest on such bonds as the same become due or to comply
with any covenants with bondholders, and the terms and
conditions of such receivership; may provide for the in-
vestment or reinvestment of any funds of the commission;
and may provide for such other and additional covenants,
agreements and provisions as shall be deemed desirable
or necessary by the commission for the security of the
holders of such bonds.

Sec. 13. Deposit and Disposition of Funds; Examination
of Accounts and Books of Commission.—All moneys of the
commission, unless the trust agreement referred to in sec-
tion twelve shall provide for such moneys to be held and
applied by a trustee, from whatever source derived shall
be paid to the state treasurer, with advice to the treasurer
in each case as to the water works system (or group of
systems, where appropriate), to which such money shall
be credited. The state treasurer shall not commingle said
moneys with any other moneys, but shall deposit them in
a separate bank account for each water works system (or
group of systems if so instructed by the commission).
The moneys in each said account shall be paid out on check of the treasurer on requisition of the chairman of the commission, or of such other person as the commission may authorize to make such requisition. All deposits of such money shall be secured by obligations of the United States, of the state of West Virginia, or of the commission, of a market value equal at all times to the amount of the deposit, and all banking institutions are authorized to give such security for such deposits. The state tax commissioner and his legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other matters relating to its financial standing. All moneys required by the bond resolution to be remitted to the state sinking fund commission for principal, interest and reserve funds, shall be transferred by the state treasurer to the state sinking fund commission, upon requisition of the commission. The commission may withdraw moneys from the state treasurer as it may deem desirable from time to time and deposit same with the state sinking fund commission for investment, in such manner as may be provided by law, in direct obligations of the government of the United States.

Sec. 14. Disposition of Water Works Systems.—Whenever the principal and interest on all bonds issued to finance the acquisition, construction and improvement of a water works system (or any group of systems combined for the purpose of issuing bonds hereunder) have been fully paid, the commission may convey and transfer any such water works systems, or any part thereof, to any appropriate municipality or other political subdivision or other public body which the commission deems advisable and in the best interest of the state, and upon such terms and conditions as the commission may determine to be just and proper.

The commission shall also have power, at any time, to sell, transfer and convey all or any part of any water works system or systems acquired or constructed by it to any municipality or other political subdivision or other public
body under such terms, conditions and restrictions and at
such price as the commission shall deem proper and in
the best interests of the state and such municipality or
other political subdivision or other public body: Provided,
however, That no such sale, conveyance or transfer shall
ever be made which will jeopardize the security of the
holders of any bonds of the commission then outstanding,
and any such sale, conveyance or transfer shall be made
only in full and strict compliance with any and all terms,
restrictions, conditions, covenants and agreements con-
tained in the resolutions, trust agreements or mortgages
pursuant to which any bonds of the commission then out-
standing were issued. The proceeds derived from the sale
of any part or all of said water works system, or systems,
shall be applied as provided in such resolutions, trust
agreements or mortgages pursuant to which any bonds
of the commission then outstanding were issued, and
after full compliance with such resolutions, trust agree-
ments or mortgages, in such manner as the commission
shall deem proper.

Sec. 15. Commission Constituted a Body Corporate and
Agency of the State.—The commission is hereby made
and shall be a body corporate, and is hereby declared to
be an agency of the state of West Virginia, and shall con-
tinue in existence until dissolved by an act of the Legis-
lature of the state of West Virginia: Provided, however,
That the commission shall in any event continue in exist-
ence as long as any bonds issued by the commission are
outstanding and unpaid as to both principal and interest.

Sec. 16. Management and Control of Water Works Sys-
tems by Commission.—The commission shall maintain,
repair, operate, manage and control all water works sys-
tems acquired, constructed or improved by it, fix rates or
charges for water and water service furnished to custom-
ers, and establish by-laws and rules and regulations for
the use and operation of such water works systems and
each of them, and may make and enter into all contracts
or agreements necessary and incidental to the perform-
ance of its duties and the execution of its powers under
this article.
Sec. 17. Issuance of Refunding Bonds.—The commission shall have power to issue refunding bonds for the purpose of funding or refunding any bonds theretofore issued and then outstanding, and may either sell such refunding bonds for the purpose of paying and redeeming such outstanding bonds or may exchange such refunding bonds for such outstanding bonds in such manner and under such terms and conditions as the commission shall deem advisable.

The commission shall have power to refund any of said outstanding bonds either at or prior to the maturity thereof or on the first date upon which such outstanding bonds are redeemable prior to maturity. If the commission shall determine to refund said outstanding bonds prior to maturity, or prior to the first date upon which such outstanding bonds are redeemable prior to maturity, and shall not exchange such refunding bonds for said outstanding bonds, then the commission shall be authorized to issue and sell such refunding bonds and invest the proceeds or part of the proceeds in obligations of the United States of America or other securities approved by the commission or in time deposits in banks or trust companies represented by certificates of deposit, pending the payment or prior redemption of said outstanding bonds to be refunded. In such event the proceeds of such refunding bonds, together with the securities in which the same are invested, shall be deposited in an irrevocable trust fund and used only for the purpose of paying the principal, interest and redemption premiums, if any, on said outstanding bonds as the same mature and become due at the maturity or date of prior redemption thereof.

In making the deposit into said irrevocable trust fund, the commission may either deposit the full amount which will be sufficient to pay all the principal of and interest on the outstanding bonds maturing prior to and on the date on which such outstanding bonds are to be redeemed prior to maturity, together with the principal of and redemption premiums thereon due on the date of such prior redemption; or, may deposit in such irrevocable trust fund only the amount which the commission shall
determine will be sufficient, together with the income to be realized from the investment of such money so deposited, to pay all the principal of and interest on the outstanding bonds maturing prior to and on the date on which such outstanding bonds are to be redeemed prior to maturity, together with the principal of and redemption premiums thereon due on the date of such prior redemption.

The issuance of said refunding bonds shall as to the manner of sale and exchange thereof for outstanding bonds and in all other respects be subject to all the applicable provisions of this article relating to the authorization and issuance of bonds.

Sec. 18. Jurisdiction of Public Service Commission.—The West Virginia water development commission shall at all times comply with the provisions of chapter twenty-four of this code in carrying out the provisions of this article and shall be subject to the jurisdiction of the public service commission.

Sec. 19. Construction of Article.—Being for the public health, safety and welfare, this article shall be liberally construed to effectuate the purposes thereof.

Sec. 20. Provisions of Article Separable and Severable. —The various provisions of this article shall be construed as separable and several, and should any of the provisions or parts thereof be construed or held to be unconstitutional or for any other reason invalid, the remaining provisions of this article shall not be thereby affected.

CHAPTER 78

(House Bill No. 352—By Mr. Speaker, Mr. Singleton, and Mr. Kidd)

[Passed March 8, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two, relating to and authorizing the several counties and the—
several municipalities in this state to acquire by purchase, construction, or gift, any site, structure, building, fixtures, machinery and equipment, including both real and personal property, which shall be suitable as a factory, mill, shop, processing, assembly, manufacturing, or fabricating plant; to authorize such counties or such municipalities, individually or jointly, to finance the acquisition of such properties by the issuance of negotiable revenue bonds payable out of the revenues derived from the leasing of such properties for the purpose of operating an industrial plant; to authorize the sale of such plants; to authorize the several counties and the several municipalities to lease such industrial plants subject to certain specified requirements; to authorize the pledging of such revenues and leases to secure the payment of such revenue bonds and interest thereon; to authorize the execution of a mortgage or deed of trust conveying such industrial plant in trust as further security for payment of such bonds and interest thereon; to provide the manner of execution and delivery of such bonds; to provide the manner, form, time and place of payment of said bonds and interest; to provide for the redemption of such bonds; to provide for the refunding of such bonds; to provide for sale of such bonds; to provide for remedies in respect to default in payment thereof; to provide for exemption from taxation of such industrial plants, the revenues derived therefrom, and the bonds and the interest thereon; to prohibit any county or any municipality from making any tax levy as a contribution to the cost of such industrial plant; to provide that such revenue bonds shall not constitute an indebtedness of the county or the municipality; to provide that such bonds shall be legal investments for financial institutions and insurance companies; to provide the purpose for which the proceeds of such bonds may be used; to provide that no approval by the voters shall be required prior to the issuance of such bonds and to exempt the public officials issuing said bonds from personal liability thereon.

Be it enacted by the Legislature of West Virginia:

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

Article 2-c. Industrial Development Bond Act.

Section
1. Short title.
2. Legislative finding.
3. Definitions.
4. Powers conferred on counties and municipalities.
5. Location of plant.
6. Joint establishment by two or more governmental bodies.
7. Bonds issued to finance industrial plant.
9. Requirements respecting lease of industrial plant.
10. Redemption of bonds.
11. Refunding bonds.
12. Use of proceeds from sale of bonds.
13. No contribution by county or municipality.
15. Exemption from taxation.
16. Construction of article.
17. No notice, consent, or publication required.
19. Public officials exempt from personal liability.
20. Prohibition of financial interest of public officials.

Section 1. Short Title.—This article may be known as and may be cited as the “Industrial Development Bond Act”.

Sec. 2. Legislative Finding.—It is hereby determined and declared as a matter of legislative finding (a) that critical conditions of unemployment exist in many areas of this state; (b) that lack of employment and business opportunities have resulted in thousands of people leaving this state to find employment elsewhere, and this exodus has adversely affected the tax base of counties and municipalities within this state, resulting in an impairment of their ability to support local government; (c) that the development of new commercial, industrial and manufacturing plants are essential to relieve unemployment and establish a balanced economy within the state; (d) that the present and prospective health, happiness, safety, right of gainful employment, and general welfare of the citizens of each of the counties and municipalities of this state will be promoted by the establishment of industrial plants as herein provided; (e) and that the means and measures herein authorized for the promotion of industrial plants are as a matter of public policy, for the
Sec. 3. Definitions.—The following terms, whenever used in this article, shall have the following meaning:

(a) The term “municipality” shall mean any incorporated town or city.

(b) The term “county court” shall mean the governmental body created by section twenty-two, article eight of the West Virginia constitution.

(c) The term “governmental body” shall mean the county court, the council of a town or city, or any other governing body in lieu thereof.

(d) The term “industrial plant” shall mean any site, structure, building, fixtures, machinery, equipment, and related facilities, including both real and personal property or any combination thereof which shall be suitable as a factory, mill, shop, processing, assembly, manufacturing, or fabricating plant but not to include facilities designed for sale or distribution to the public of electricity, gas, water, telephone or other services commonly classified as “public utilities”.

Sec. 4. Powers Conferred on Counties and Municipalities.—In addition to any other powers which a county or municipality may now have, each county, by and through its county court, and each municipality, by and through its council or other governing body in lieu thereof, shall have the following powers: (1) To acquire, whether by purchase, construction, or gift, one or more industrial plants, or additions thereto, which shall be located within this state; (2) to lease to others any or all of its industrial plants for such rentals and upon such terms and conditions as the governing body may deem advisable and such governmental body may grant unto its lessee an option to purchase said industrial plant, at the expiration of the term of said lease, upon such terms as may be agreed upon; (3) to issue revenue bonds for the purpose of defraying the cost of acquiring, by construction and purchase, or by either, an industrial plant, or an addition, extension, or improvement thereto, and to secure the payment of such bonds, all as hereinafter pro-
vided; and (4) to issue and deliver revenue bonds in exchange for an industrial plant.

Sec. 5. Location of Plant.—Any industrial plant acquired by a county, by construction and purchase, or by either, shall be located within the county issuing such revenue bonds and any industrial plant acquired by a municipality, by construction and purchase, or by either, may be situated without or within the corporate bounds of such municipality, but it shall be located within the county in which said municipality is situated, except where a part of such municipality is situated within two or more counties, then said industrial plant may be located within either county of which said municipality forms a part and when an industrial plant is so acquired by a municipality same shall not be located within the corporate bounds of another municipality without the consent of the governing body of such municipality and such industrial plant shall also not be located at a distance greater than ten miles from the corporate boundary of the municipality acquiring the same.

Sec. 6. Joint Establishment by Two or More Governmental Bodies.—Any two or more governmental bodies may jointly acquire by purchase, construction, or gift, one or more industrial plants or additions thereto by the issuance and delivery of revenue bonds in which case such governmental bodies shall jointly exercise all the rights, authority, power, and duties herein conferred upon a county court or a municipality when acting singly and they shall also be subject to the same limitations, restrictions, and conditions as are herein imposed on a single governmental body in connection with the acquisition of an industrial plant. The respective governing bodies, acting jointly, may provide by agreement among themselves, the terms and conditions of such joint participation.

Sec. 7. Bonds Issued to Finance Industrial Plant.—All bonds issued by a county court or by a municipality under the authority of this article shall be limited obligations of the county, or of the municipality, the principal and interest on which shall be payable out of the revenues derived from the leasing of the plant to finance which the
bonds are issued or any other revenue derived from such industrial plant. The bonds and interest coupons issued under the authority of this article shall never constitute an indebtedness of the county, or of the municipality issuing the same, within the meaning of any constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the county, or of the municipality issuing the same. Neither shall such bond and/or interest thereon be a charge against the general credit or taxing powers of the county, or the municipality and such fact shall be plainly stated on the face of each such bond. Such bonds may be executed, issued and delivered at any time and from time to time, may be in such form and denomination; may be of such tenor, must be negotiable but may be registered as to the principal thereof, may be payable in such amounts and at such time or times; may be payable at such place or places, may bear interest at such rate or rates not to exceed six per cent per annum, payable at such place or places and evidenced in such manner, and may contain such provisions therein not inconsistent herewith, all as shall be provided in the proceedings of the governing body whereunder the bonds shall be authorized to be issued. Said bonds may be sold by the governing body at public or private sale and such sale to be made at a price not lower than a price which, computed upon standard tables of bond values, will have a net return of not more than six per cent per annum to the purchaser upon the amount paid therefor. The said bonds may also be issued and delivered to the owners of an industrial plant in exchange therefor and in payment of the purchase price thereof.

The bonds issued pursuant to this article by a county court shall be signed by the president and attested by the clerk of the county court under the seal of the court and the bonds issued by a municipality shall be signed by the mayor or other chief officer thereof and attested by the clerk, recorder, or other official custodian of the records of said municipality and under the seal of the municipality. The coupons attached thereto shall bear the facsimile signature of the president of the county court or the
mayor or other chief officer of the municipality. In case any of the officials whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes to the same extent as if they had remained in office until such delivery.

If the proceeds of such bonds by error of calculation or otherwise, shall be less than the cost of the industrial plant, additional bonds may in like manner be issued to provide the amount of the deficiency, and unless otherwise provided for in the trust agreement, mortgage, or deed of trust, shall be deemed to be of the same issue, and shall be entitled to payment from the same fund, without preference or priority, and shall be of equal priority as to any security.

Sec. 8. Security for Bonds.—There is hereby created a statutory mortgage lien upon all real estate, buildings, structures, improvements and personal property included as a part of an industrial plant which was acquired, purchased, constructed, or built or improved with the proceeds of the bonds authorized to be issued under this article, for the purpose of securing the principal of said bonds and the interest thereon. The principal of and interest on any bonds issued under the authority of this article shall be secured by a pledge of the income and revenues derived from the lease of the industrial plant, and also be secured by a pledge of the proceeds of any sale thereof. In the discretion and at the option of the county court or municipality, such revenue bonds may be secured by a trust indenture by and between the county court or the municipality and a corporate trustee, which may be a trust company or bank having trust powers, within or without the state of West Virginia. The governing body may authorize the issuance of such revenue bonds by resolution. The resolution authorizing the revenue bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for the protection and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the county
court or the municipality in relation to the construction
or acquisition of an industrial plant, or part thereof, or
an addition thereto, and the improvement, repair, mainte-
nance and insurance thereof, and for the custody, safe-
guarding and application of all moneys, and may provide
that the plant shall be constructed and paid for under
the supervision and approval of the consulting engineers
or architects, employed and designated by the governing
body and satisfactory to the purchasers of the bond, their
successors, assigns, or nominees, and the lessee, or either
thereof, who may require the security given by any con-
tractor and/or any depository of the proceeds of the bonds
or the revenues received from the lease or sale of the
industrial plant be satisfactory to such purchasers, their
successors, assigns, or nominees, and/or be satisfactory
to the lessee or purchaser of the industrial plant. Such
indenture may set forth the rights and remedies of the
bondholders, the county or municipality and/or such
trustee and said indenture may provide for accelerating
the maturity of the revenue bonds, at the option of the
bondholders and/or the governmental body issuing the
same, upon default by the lessee in the payment of rentals,
or for other cause. The governing body may also provide
by resolution and in such trust indenture for the pay-
ment of the proceeds of the sale of the bonds and the
revenues from the industrial plant to such depository, as
it may determine, for the custody thereof and for the
method of distribution thereof, with such safeguard and
restrictions as it may determine to be necessary or advis-
able for the protection thereof and upon the filing of a
certified copy of such resolution, or of the indenture
agreement for record in the office of the clerk of the
county court of any county, in which an industrial plant
is located, the same shall have the same effect as to notice,
as the recordation of a deed of trust or other recordable
instrument.

In lieu of the indenture agreement provided for herein-
above the principal of and interest on said bonds may be
secured by a mortgage or deed of trust covering all or any
part of the industrial plant from which the revenues so
pledged may be derived and the same may be secured
by an assignment of the lease on said industrial plant and by assignment or pledge of the income received by virtue of said lease. The proceedings under which such bonds are authorized to be issued, when secured by a mortgage or deed of trust, may contain the same terms, conditions, and provisions provided for herein when an indenture agreement is entered into between the governing body and a trustee and any such mortgage or deed of trust may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of rents for any plant covered by such proceedings or mortgage, the terms to be incorporated in the lease of such plant, the maintenance and insurance of such plant, the creation and maintenance of special funds from the revenues received from the lease of such plant and the rights and remedies available in event of default to the bondholders, the governmental body, or to the trustee under a mortgage, or deed of trust, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of this article or any existing law: Provided, however, That in making any such agreements or provisions a county or municipality shall not have the power to obligate itself by indenture, ordinance, resolution, mortgage, or deed of trust, except with respect to the plant and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers. The proceedings authorizing any bonds hereunder and any indenture, mortgage, or deed of trust securing such bonds may provide that, in the event of default in payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings, indenture, mortgage, or deed of trust, such payment and performance may be enforced by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the plant in accordance with such proceedings or the provisions of such indenture, agreement, mortgage, or deed of trust. Any such mortgage or deed of trust
may provide also that, in the event of default in such payment or the violation of any agreement contained in the mortgage or deed of trust, the mortgage or deed of trust may be foreclosed either by sale at public outcry or by proceedings in equity, and may provide that the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale, if the highest bidder therefor. No breach of any such agreement shall impose any pecuniary liability upon a county or municipality or any charge upon its general credit or against its taxing powers.

Sec. 9. Requirements Respecting Lease of Industrial Plant.—Prior to the issuance of any bonds, the county court or the municipality shall lease the industrial plant to a lessee under an agreement providing for payment to the county court or municipality or designated depository of such rentals as will be sufficient (a) to pay the principal of and interest on the bonds issued to finance the plant as such principal and interest respectively mature, (b) to build up and maintain any reserves deemed by the governing body to be advisable in connection therewith, and (c) unless the agreement of lease obligates the lessee to pay for the cost of maintaining, repairing and insuring of the plant to pay the costs of maintaining the plant in good repair and keeping it properly insured. The said lease shall contain a provision for the revision of the lease from time to time, so as to produce sufficient revenue to pay the interest and create a sinking fund sufficient to pay the principal of said bonds when due and to provide for the maintenance, repair, and insurance of the industrial plant unless the latter be assumed by the lessee. The said lease shall also contain such other provisions relating to the industrial plant and the operation, maintenance and improvement thereof and as to the rights of the lessor and lessee thereof as shall be deemed necessary and advisable by the governmental body.

Sec. 10. Redemption of Bonds.—The revenue bonds issued pursuant to this article may contain a provision therein to the effect that they, or any of them, may be called for redemption at any time prior to maturity by
the governmental body, and at such redemption prices, or premiums, which terms shall be stated in the bond.

Sec. 11. Refunding Bonds.—Any bonds issued hereunder and at any time outstanding may at any time and from time to time be refunded by a county or municipality by the issuance of its refunding bonds in such amount as the governing body may deem necessary to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon; to make any improvements or alterations in the industrial plant; and any premiums and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the redemption of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby: Provided, That the holders of any bonds so to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding bonds issued under the authority of this article shall be payable from the revenues out of which the bonds to be refunded thereby were payable, and shall be subject to the provisions contained in section seven of this article and shall be secured in accordance with the provisions of section eight of this article.

Sec. 12. Use of Proceeds from Sale of Bonds.—The proceeds from the sale of any bonds issued under authority of this article shall be applied only for the purpose for which the bonds were issued: Provided, however, That any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold: And provided further, That if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the payment of the principal of or the interest on said bonds, or held in reserve for the payment
thereof. The cost of acquiring any plant shall be deemed to include the following: The cost of acquiring any real estate deemed necessary, the actual cost of the construction of any part of a plant which may be constructed, including architects', engineers', financial or other consultants', and legal fees; the purchase price of any part of a plant that may be acquired by purchase; all expense incurred in connection with the authorization, sale and issuance of the bonds to finance such acquisition; and the interest on such bonds for a reasonable time prior to construction, during construction, and for not exceeding twelve months after completion of construction and any other cost and expense necessary in the establishment and acquisition of such industrial plant and the financing thereof.

Sec. 13. No Contribution by County or Municipality.—No county court or municipality shall have the power to pay out of its general funds, or otherwise contribute, any of the cost of acquiring or constructing an industrial plant, to be financed out of the proceeds from the sale of revenue bonds issued under the authority of this article: Provided, however, That this provision shall not be construed to prevent a county or municipality from accepting donations of property to be used as a part of an industrial plant or any to be used for defraying any part of the cost of any such plant. The bonds issued pursuant to this article shall be payable solely from the revenue derived from the industrial plant and shall not constitute an indebtedness of the county or of the municipality within the meaning of any constitutional provision and it shall be plainly stated on the face of each bond that it has been issued under the provisions of this article and that it does not constitute an indebtedness of the county or municipality within the meaning of the constitution of West Virginia.

No county court or municipality shall have the authority under this article to levy any taxes for the purpose of paying any part of the cost of acquiring an industrial plant. However, all necessary preliminary expenses actually incurred by a county court or a municipality in the making of surveys, taking options, preliminary plan-
ning, and all other expenses necessary to be paid prior to the issuance, sale, and delivery of the revenue bonds, may be paid by such governmental body out of any surplus contained in any item of budgetary appropriation or any revenues collected in excess of anticipated revenues, which shall be reimbursed and repaid out of the proceeds of the sale of the revenue bonds.

Sec. 14. Bonds Made Legal Investments.—Bonds issued under the provisions of this article shall be legal investments for banks, building and loan associations, and insurance companies organized under the laws of this state and for a business development corporation organized pursuant to chapter thirty-one, article fourteen of the code of West Virginia.

Sec. 15. Exemption from Taxation.—The revenue bonds issued pursuant to this article and the income therefrom shall be exempt from taxation except inheritance, estate, and transfer taxes; and the real and personal property which a county court or a municipality may acquire to be leased to an industrial plant according to the provision of this article, shall be exempt from taxation by the state, or any county, municipality, or other levying body, as public property, so long as the same is owned by such county or municipality.

Sec. 16. Construction of Article.—Neither this article nor anything herein contained shall be construed as a restriction or limitation upon any powers which a county or municipality might otherwise have under any laws of this state, but shall be construed as alternative or additional; and this article shall not be construed as requiring an election by the voters of a county or municipality prior to the issuance of bonds hereunder by such county or municipality, and same shall not be construed as requiring any proceeding under any law or laws, other than that which is required by this article.

Sec. 17. No Notice, Consent, or Publication Required.—No notice to or consent or approval by any other governmental body or public officer shall be required as a prerequisite to the issuance or sale of any bonds or the making of any agreement, a mortgage or deed of trust under
the authority of this article. No publication or notice
shall be necessary to the validity of any resolution or pro-
ceeding had under this article.

Sec. 18. Severability.—If any section, clause, provision
or portion of this article shall be held to be invalid or
unconstitutional by any court of competent jurisdiction,
such holding shall not affect any other section, clause or
provision of this article which is not in and of itself un-
constitutional.

Sec. 19. Public Officials Exempt from Personal Liabil-
ity.—No official or member of a municipality or of a
county court shall be personally liable on any contract,
or obligation executed pursuant to the authority herein
contained, nor shall the issuance of bonds hereunder be
considered as misfeasance in office.

Sec. 20. Prohibition of Financial Interest of Public
Officials.—No member of a county court or the governing
body of a municipality issuing revenue bonds under the
provisions of this article shall have any financial inter-
est, directly or indirectly, in the leasing of an industrial
plant acquired or constructed pursuant to this article.

CHAPTER 79
(Senate Bill No. 4—By Mr. McCourt)

[Passed February 12, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to amend and reenact section fourteen-a, article three,
chapter thirty-three of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to ad-
ditional insurance premium tax.

Be it enacted by the Legislature of West Virginia:

That section fourteen-a, article three, 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:

Article 3. Licensing, Fees and Taxation of Insurers.

Section
14-a. Additional premium tax.
Section 14-a. Additional Premium Tax.—For the purpose of providing additional revenue for the state general revenue fund, there is hereby levied and imposed, in addition to the taxes imposed by section fourteen of this article, an additional premium tax equal to one per cent of such gross direct premiums, including dividends (by whatever name called) on participating policies applied in reduction of premiums, less premiums returned to policyholders because of cancellation of policy. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition and collection of the regular premium tax shall be applicable to the levy, imposition and collection of such additional tax.

All moneys received from the additional tax imposed by this section, less deductions allowed by this article for refunds and for costs of administration, shall be received by the commissioner and shall be paid by him into the state treasury for the benefit of the state fund.

CHAPTER 80
(House Bill No. 554—Originating in the House Committee on Finance)

[Passed March 7, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to amend article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen-b, relating to credits against insurance premium tax.

Be it enacted by the Legislature of West Virginia:

That article three, 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 fourteen-b, to read as follows:

Article 3. Licensing, Fees and Taxation of Insurers.

Section 14-b. Credits against premium tax for investment in West Virginia securities.
Section 14-b. Credits against Premium Tax for Investment in West Virginia Securities.—If the annual statement of any insurance company covering a calendar year shows it to have investments at the close of said year in West Virginia securities, as hereinafter defined, of as much as twenty-five per centum of its admitted assets, it shall be entitled to a credit against the premium tax levied by section fourteen-a of this article in an amount equal to one hundred per centum of such tax for such calendar year.

West Virginia securities, as used in this section, shall mean real estate situate in this state; bonds or interest bearing notes or obligations of this state; bonds or interest bearing notes or obligations of any county, district, school district or independent school district, municipality or any other political subdivision of this state; bonds or notes secured by mortgages or deeds of trust on real estate situate in this state; securities of corporations organized and existing under the laws of this state including, but not by way of limitation, bonds, debentures, notes, equipment trust obligations or other evidences of indebtedness, and shares of common and preferred stock of such corporations; cash deposits in regularly established national or state banks in this state; and investment shares and investment share accounts in federal savings and loan associations in this state: Provided, however, That such cash deposits and such investment shares and investment share accounts shall be computed on the basis of the average monthly deposits throughout the said calendar year.

CHAPTER 81
(House Bill No. 220—By Mr. Hill)

[Passed March 8, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article seven, chapter thirty-three of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the standard valuation law for life policies.

Be it enacted by the Legislature of West Virginia:

That section nine, article seven, 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 9. Standard Valuation Law for Life Policies.—

(1) The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer transacting insurance in this state, except that in the case of an alien insurer such valuation shall be limited to its United States business, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or other) used in the calculation of such reserves.

All valuations made by him or by his authority shall be made upon the net premium basis.

In every case the standard of valuation employed shall be stated in his annual report.

In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien insurer, he may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.
Any such insurer which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided.

(2) This subsection shall apply to only those policies and contracts issued prior to the original operative date of the Standard Nonforfeiture Law (now section thirty of article thirteen of this chapter). All valuations shall be according to the standard of valuations adopted by the insurer for the obligations to be valued. Any insurer may adopt different standards for obligations of different dates or classes, but if the total value determined by any such standard for the obligation for which it has been adopted shall be less than that determined by the legal minimum standard hereinafter prescribed, or if the insurer adopts no standard, said legal minimum standard shall be used.

The legal minimum standard for contracts issued before the first day of January, in the year one thousand nine hundred one, shall be actuaries' or combined experience table of mortality with interest at four per cent per annum, and for contracts issued on or after said date shall be the "American Experience Table" of mortality with interest at three and one-half per cent per annum. Policies issued by insurers doing business in this state may provide for not more than one year preliminary term insurance: Provided, however, That if the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereof in less than twenty years from the date of the policy, or under an endowment preliminary term policy, exceeds that charged for like insurance under twenty payment life preliminary term policies of the same insurer, the reserve thereon at the end of any year, including the first, shall not be less than the reserve on a twenty payment life preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium sufficient to provide for a pure endowment at the end of the premium payment period, equal to the difference between the value at the
end of such period of such a twenty payment life preliminary term policy and a full reserve at such time of such a limited payment life or endowment policy.

The commissioner may vary the standards of interest and mortality in the case of alien insurers and in particular cases of invalid lives and other extra hazards.

Reserves for all such policies and contracts may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

(3) This subsection shall apply to only those policies and contracts issued on or after the original operative date of the Standard Nonforfeiture Law (now section thirty of article thirteen of this chapter).

(a) The minimum standard for the valuation of all such policies and contracts shall be the commissioner's reserve valuation method defined in paragraph (b), three and one-half percent interest, and the following tables:

(i) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies—the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of subsection four-a of section thirty, article thirteen of this chapter, and the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date: Provided, That for any category of such policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than three years younger than the actual age of the insured.

(ii) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies—the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of subsection four-b of section thirty, article thirteen of this chapter, and the Commissioners 1961 Standard Industrial Mortality Table for such policies issued on or after such operative date.
(iii) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies—the 1937 Standard Annuity Mortality Table or, at the option of the company, the Annuity Mortality Table for 1949, ultimate, or any modification of either of these tables approved by the commissioner.

(iv) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies—the Group Annuity Mortality Table for 1951, any modification of such table approved by the commissioner, or, at the option of the company, any of the tables or modification, of tables specified for individual annuity and pure endowment contracts.

(v) For total permanent disability benefits in or supplementary to ordinary policies or contracts—for policies or contracts issued on or after January first, one thousand nine hundred sixty-six, the tables of period two disablement rates and the one thousand nine hundred thirty to one thousand nine hundred fifty termination rates of the one thousand nine hundred fifty-two disability study of the society of actuaries, with due regard to the type of benefit; for policies or contracts issued on or after January first, one thousand nine hundred sixty-one and prior to January first, one thousand nine hundred sixty-six, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January first, one thousand nine hundred sixty-one, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(vi) For accidental death benefits in or supplementary to policies—for policies issued on or after January first, one thousand nine hundred sixty-six, the 1959 Accidental Death Benefits Table; for policies issued on or after January first, one thousand nine hundred sixty-one and prior to January first, one thousand nine hundred sixty-six, either such table or, at the option of the company, the Inter-company Double Indemnity Mortality Table; and for policies issued prior to January first, one thousand
nine hundred sixty-one, the Inter-company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(vii) For group life insurance, life insurance issued on the substandard basis and other special benefits—such tables as may be approved by the commissioner.

(b) Reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (A) over (B), as follows:

(A) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which the premium falls due: Provided, however, That such net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(B) A net one-year term premium for such benefits provided for in the first policy year.

Reserves according to the commissioner's reserve valuation method for (i) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, (ii) annuity and pure endowment contracts, (iii) disability and accidental death
benefits in all policies and contracts, and (iv) all other benefits, except life insurance and endowment benefits in life insurance policies, shall be calculated by a method consistent with the principles of this paragraph (b), except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

(c) In no event shall an insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the method set forth in paragraph (b) and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(d) Reserves for any category of policies, contracts or benefits as established by the commissioner may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein: Provided, however, That reserves for participating life insurance policies may, with the consent of the commissioner, be calculated according to a rate of interest lower than the rate of interest used in calculating the nonforfeiture benefits in such policies, with the further proviso that if such lower rate differs from the rate used in the calculation of the nonforfeiture benefits by more than one-half per cent the insurer issuing such policies shall file with the commissioner a plan providing for such equitable increases, if any, in the cash surrender values and nonforfeiture benefits in such policies as the commissioner shall approve.

(e) If the gross premium charged by any life insurer on any policy or contract is less than the net premium for the policy or contract according to the mortality table, rate of interest and method used in calculating the reserve thereon, there shall be maintained on such policy or contract a deficiency reserve in addition to all other

reserves required by law. For each such policy or contract the deficiency reserve shall be the present value, according to such standard, of an annuity of the difference between such net premium and the premium charged for such policy or contract, running for the remainder of the premium-paying period.

CHAPTER 82
(Senate Bill No. 289—By Mr. McKown and Mr. Smith)

[Passed March 9, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article eight, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to investments by insurers in real property mortgages.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article eight, 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:

Article 8. Investments.
Section 15. Real Property Mortgages.

Section 15. Real Property Mortgages.—(a) An insurer may invest in entire first mortgages on improved unencumbered real estate or the entire issue of bonds secured thereby located within any state worth at least thirty-three and one-third per centum 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-five thousand dollars or two per centum of the insurer’s assets, whichever is the greater.

(b) “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 build-
ings suitable for residence or commercial use are situated.

(c) Real property shall not be deemed to be encum-
bered 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 restric-
tions 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 other-
wise disturbed.

(d) Notwithstanding the restrictions set forth in this 
section any insurer may invest (1) in bonds or notes se-
cured by mortgage or trust deed insured by the federal 
housing administration or in debentures issued by it 
under the terms of an act of Congress of the United 
States entitled the "National Housing Act," as hereto-
fore or hereafter amended and (2) in securities issued 
by national mortgage associations established by or under 
the authority of the National Housing Act, and (3) in 
bonds or notes secured by mortgage or trust deed guar-
anteed as to principal by the administrator of veterans' 
affairs pursuant to the provisions of Title III of an act of 
Congress of the United States as of June twenty-two, one 
thousand nine hundred forty-four, entitled the "Servicemen's Re-Adjustment Act of one thousand nine hundred 
forty-four," as heretofore or hereafter amended.

(e) Notwithstanding the restrictions herein set forth 
the amount of any first mortgage investment as limited 
by paragraph (a) of this section may be exceeded if and 
to the extent that such excess shall be guaranteed by the 
administrator of veterans' affairs pursuant to the provi-
sions of Title III of an act of Congress of the United 
States of June twenty-two, one thousand nine hundred 
forty-four, entitled the "Servicemen's Re-Adjustment Act
of one thousand nine hundred forty-four," as heretofore
or hereafter amended.
(f) No such insurer shall in any manner, either di-
rectly or indirectly, by means of corporations, holding
companies, trustees or otherwise, invest in real estate
securities junior to first mortgages unless the first mort-
gage in its entirety is owned by the insurer.

CHAPTER 83
(Senate Bill No. 198—By Mr. Davis)

[Passed February 21, 1963: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article fifteen, chap-
ter thirty-three of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to accident
and sickness insurance and providing that any reference to
other insurance shall not be interpreted to mean or apply
to any policy of liability or workmen's compensation in-
surance.

Be it enacted by the Legislature of West Virginia:

That section one, article fifteen, 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:

Article 15. Accident and Sickness Insurance.

Section 1. Scope of article.
1. Scope of article.
2. Section 1. Scope of Article.—Nothing in this article
shall apply to or affect:
(a) Any policy of liability or workmen's compensation
insurance nor shall any of the references to "other insur-
ance" contained in this article be interpreted to mean,
include, or apply to, any policy of liability or workmen's
compensation insurance.
(b) Any group accident and sickness policy issued in
accordance with article sixteen of this chapter.
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10  (c) Life insurance (including endowment or annuity contracts), or contracts supplemental thereto, which contain only such provisions relating to accident and sickness insurance as (1) provide additional benefits in case of death by accidental means, or as (2) operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured shall become totally and permanently disabled as defined by the contract or supplemental contract.

20  (d) Reinsurance.

CHAPTER 84
(House Bill No. 295—By Mr. Brotherton)

[Passed March 7, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article seventeen, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fees of justices in civil cases.

Be it enacted by the Legislature of West Virginia:

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

Article 17. Fees, Fines and Costs.

Section 1. Fees of justices in civil cases.

Section 1. Fees of Justices in Civil Cases.—A justice of the peace shall charge and shall collect in advance from the party or parties requesting such services the following fees:

(1) For entering and trying any civil suit and the issuance of all papers including distress warrant and attachment orders and the performance of all other services in connection with any such civil suit whether the suit be
contested or uncontested and whether or not the suit be completed or discontinued but excepting services in connection with executions or garnishments and suggestee executions...

2 (2) For all services in connection with an execution on judgment, suggestion on judgment, execution and garnishment whether execution be without garnishment or there be both execution and garnishment or suggestee execution...

2.50

2 (3) For each bond filed in a case, appeal bond, stay-of-execution bond, bail bond, civil order of arrest, detinue bond, except bond in attachment case and docketing same...

1.00

2 (4) For taking depositions of witnesses if done in an hour or less...

1.00

2 (5) If not completed in an hour, for additional time at the rate, per hour of...

1.00

2 (6) For taking an inquest on a dead body, to be audited and paid from the treasury of the county...

5.00

2 (7) Order of appraisement, appointing appraisers, swearing of the same and docketing same, to be paid by plaintiff...

1.00

2 (8) For taking and certifying acknowledgment of deed or other instrument of writing...

.50

2 (9) For mailing each suggestee execution by registered and/or certified mail and return receipt requested...

.35

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CHAPTER 85

(House Bill No. 256—By Mr. Lohr)

(Passed March 8, 1963; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact sections two and twelve, article seventeen, chapter fifty of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to constable's fees in civil and criminal cases.

Be it enacted by the Legislature of West Virginia:

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

Article 17. Fees, Fines and Costs.

Section 2. Fees of constables in civil cases.

Section 2. Fees of Constables in Civil Cases.—Every constable shall charge and collect in advance from the party or parties requesting such services the following fees in civil cases:

1. For service and return of summons to commence a suit $2.75, and for every additional summons in the same suit .75
2. For servicing and returning order of attachment, for each garnishee summoned 1.00
3. For taking property under order of attachment, including inventory and appraisement, besides the reasonable expenses of removing, securing and keeping the property attached 2.50
4. For subpoenas, for each person served therewith .50
5. For summoning and returning a jury 1.50
6. For levying an execution on personal property and return 2.00
7. For posting notices of sale (3) for suggestee execution, suggestion order, attachment, distress warrant, each .40
8. For money collected and paid to justice, constable or plaintiff, after levy, under execution, suggestee execution, suggestion order, distress warrant or attachment, sale or no sale 5%
9. For executing a writ of possession under section ten, article one of this chapter 4.00
10. For summoning the jury and witnesses for inquest on a dead body, to be audited and paid from the treasury of the county 3.00
11. Provided, however, That in an action brought
before a justice to recover a sum of money
where an attachment, garnishment or suggestion order is issued against the wages of a
defendant, the maximum fee to be charged by
the constable for said attachment, garnishment, or suggestion order shall be two dollars
and fifty cents ____________________________ 2.50
(12) Second summons in attachment, each __________ 1.00
(13) Extra time necessary in taking and removing
property under attachment order, and eviction
execution, distress warrant or writ of detinue 1.00
(14) For delivering a temporary or permanent
release ________________________________ .50

Sec. 12. Fees of Constables in Criminal Cases.—Every
constable shall be entitled to the following fees in crimi
nal cases:

1. For an arrest in case of felony ______________________ 3.50
2. For an arrest in cases other than felony ____________________ 3.00
3. For serving a subpoena __________________________ .50
4. For executing a search warrant ____________________ 2.50
5. For summoning a jury in criminal action ___________ 1.50
6. Witness fee constable ______________________________ .50
7. In cases of search warrants and proceedings under
article one, chapter sixty-two of this code, the fees of the
constable shall be chargeable to the county, shall be
audited and paid as other claims of like nature by the
county court.
8. In criminal cases, other than felony, such fees shall
be charged and paid as provided in section fifteen, article
five, chapter seven of this code, and section eight, article
eighteen of this chapter.

CHAPTER 86

(House Bill No. 197—By Miss Tsapis and Mr. D’Aurora)

[Passed March 8, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article seventeen, chapter fifty of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to fees of justices in criminal cases.

Be it enacted by the Legislature of West Virginia:

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

Article 17. Fees, Fines and Costs.

Section 11. Fees of justices in criminal cases.

Section 11. Fees of Justices in Criminal Cases.—
(1) Every justice shall be entitled to a fee of four dollars in each criminal case and proceeding before him, which fee shall constitute his compensation for all official services performed by him in connection with any single case, including affidavit for warrant, search and seizure warrant, warrant for arrest, trial examination, issuing subpoena and copies thereof, warrant summoning and swearing a jury when required, swearing and certifying attendance of witnesses, entering judgment and taxing costs and all other acts in connection herewith... except, that he shall be allowed an additional fee of fifty cents for making and certifying a transcript of his docket in any particular case and transmitting the same to the clerk of the circuit court, the state road commissioner, or any other office in which he may be by law required to certify such transcript, and two dollars for bond or recognizance, to be paid by defendant. And no other fees shall be taxed or charged by any justice in such cases and proceedings: Provided, however, That under the provisions of this section the justice shall be entitled to such fees theretofore earned, as were authorized by law at the time such fees were earned, and the prosecuting attorneys and county courts may approve and pay such accrued costs in the same manner as was provided by the code of West Virginia, one thousand nine hundred thirty-one, prior to the enactment of chapters thirty-one and thirty-two, acts of the Legislature, regular session, one thousand nine hundred thirty-five.

(2) For issuing sheep warrant, appointing and swearing appraisers and docketing same 2.50
AN ACT to amend chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eight, relating to an interstate compact on juveniles.

Be it enacted by the Legislature of West Virginia:

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

**Article 8. Interstate Compact on Juveniles.**

**Section**

1. Legislative findings and policy.
2. Execution of compact.
2-a. Execution of additional article.
2-b. Execution of amendment.
4. Supplementary agreements.
5. Financial arrangements.
6. Responsibilities of state departments, agencies and officers.
7. Additional procedures not precluded.

**Section 1. Legislative Findings and Policy.**—It is hereby found and declared: (1) That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others; (2) that the cooperation of this state with other states is necessary to provide for the welfare and protection of juveniles and of the people of this state. It shall therefore be the policy of this state, in adopting
the interstate compact on juveniles, to cooperate fully
with other states: (1) In returning juveniles to such
other states whenever their return is sought; and (2) in
accepting the return of juveniles whenever a juvenile
residing in this state is found or apprehended in another
state and in taking all measures to initiate proceedings
for the return of such juveniles.

Sec. 2. Execution of Compact.—The governor is hereby
authorized and directed to execute a compact on behalf
of this state with any other state or states legally joining
therein in the form substantially as follows:

INTERSTATE COMPACT ON JUVENILES

The contracting states solemnly agree:

Article I. Findings and Purposes

That juveniles who are not under proper supervision and
control, or who have absconded, escaped or run away, are
likely to endanger their own health, morals and welfare,
and the health, morals and welfare of others. The coop-
eration of the states party to this compact is therefore
necessary to provide for the welfare and protection of
juveniles and of the public with respect to (1) cooper-
active supervision of delinquent juveniles on probation or
parole; (2) the return, from one state to another, of de-
linquent juveniles who have escaped or absconded; (3)
the return, from one state to another, of nondelinquent
juveniles who have run away from home; and (4) addi-
tional measures for the protection of juveniles and of the
public, which any two or more of the party states may find
desirable to undertake cooperatively. In carrying out the
provisions of this compact the party states shall be guided
by the noncriminal, reformative and protective policies
which guide their laws concerning delinquent, neglected
or dependent juveniles generally. It shall be the policy
of the states party to this compact to cooperate and observe
their respective responsibilities for the prompt return
and acceptance of juveniles and delinquent juveniles who
become subject to the provisions of this compact. The
provisions of this compact shall be reasonably and liberally
construed to accomplish the foregoing purposes.
Article II. Existing Rights and Remedies

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

Article III. Definitions

That for the purposes of this compact:

“Delinquent juvenile” means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court.

“Probation or parole” means any kind of conditional release of juveniles authorized under the laws of the states party hereto.

“Court” means any court having jurisdiction over delinquent, neglected or dependent children.

“State” means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

“Residence” or any variant thereof means a place at which a home or regular place of abode is maintained.

Article IV. Return of Runaways

(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile’s custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be exe-
cuted in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate
person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding ninety days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be per-
mitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

(c) That "juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

Article V. Return of Escapees and Absconders

(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped,
the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety days, as will enable his detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of...
juvenile delinquency, he shall not be returned without
the consent of such state until discharged from prosecu-
tion or other form of proceeding, imprisonment, detention
or supervision for such offense or juvenile delinquency.
The duly accredited officers of any state party to this comp-
act, upon the establishment of their authority and the
identity of the delinquent juvenile being returned, shall
be permitted to transport such delinquent juvenile
through any and all states party to this compact, without
interference. Upon his return to the state from which he
escaped or absconded, the delinquent juvenile shall be
subject to such further proceedings as may be appropriate
under the laws of that state.
(b) That the state to which a delinquent juvenile is
returned under this article shall be responsible for the
payment of the transportation costs of such return.

Article VI. Voluntary Return Procedure
1 That any delinquent juvenile who has absconded while
on probation or parole, or escaped from an institution or
agency vested with his legal custody or supervision in any
state party to this compact, and any juvenile who has run
away from any state party to this compact, who is taken
into custody without a requisition in another state party
to this compact under the provisions of article IV (a) or
of article V (a), may consent to his immediate return to
the state from which he absconded, escaped or ran away.
Such consent shall be given by the juvenile or delinquent
juvenile and his counsel or guardian ad litem if any, by
executing or subscribing a writing, in the presence of a
judge of the appropriate court, which states that the juve-
nile or delinquent juvenile and his counsel or guardian ad
litem, if any, consent to his return to the demanding state.
Before such consent shall be executed or subscribed, how-
ever, the judge, in the presence of counsel or guardian ad
litem, if any, shall inform the juvenile or delinquent juve-
nile of his rights under this compact. When the consent
has been duly executed, it shall be forwarded to and filed
with the compact administrator of the state in which the
court is located and the judge shall direct the officer hav-
ing the juvenile or delinquent juvenile in custody to de-
liver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

Article VII. Cooperative Supervision of Probationers and Parolees

(a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision
that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(d) That the sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

Article VIII. Responsibility for Costs

(a) That the provisions of articles IV(b), V(b) and VII(d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefore.

(b) That nothing in this compact shall be construed to
prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to articles IV(b), V(b) or VII(d) of this compact.

Article IX. Detention Practices

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

Article X. Supplementary Agreements

That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall (1) provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody; (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending state; (6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and (7) make provision for such other matters and details as shall be
necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

Article XI. Acceptance of Federal and Other Aid

That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

Article XII. Compact Administrators

That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

Article XIII. Execution of Compact

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form or execution to be in accordance with the laws of the executing state.

Article XIV. Renunciation

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not
be subject to the six months' renunciation notice of the present article.

**Article XV. Severability**

That the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstances shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

**Sec. 2-a. Execution of Additional Article.**—The governor is further authorized and directed to execute, with any other state or states legally joining in the same, an additional article to said compact in the form substantially as follows:

That this article shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

For the purposes of this article, "child," as used herein, means any minor within the jurisdictional age limits of any court in the home state.

When any child is brought before a court of a state of which such child is not a resident, and such state is willing to permit such child's return to the home state of such child, such home state, upon being so advised by the state in which such proceeding is pending, shall immediately institute proceedings to determine the residence and jurisdictional facts as to such child in such home state, and upon finding that such child is in fact a resident of said state and subject to the jurisdiction of the court thereof, shall within five days authorize the return of such child to the home state, and to the parent or custodial agency legally authorized to accept such custody in such home state, and at the expense of such home state, to be paid
Sec. 2-b. Execution of Amendment.—The governor is further authorized and directed to execute, with any other state or states legally joining in the same, an amendment to said compact in the form substantially as follows:

(a) This amendment shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

(b) All provisions and procedures of articles V and VI of the interstate compact on juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile, charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in article V of the compact shall be forwarded by the judge of the court in which the petition has been filed.

Sec. 3. Juvenile Compact Administrator.—Pursuant to said compact, the governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact. Said compact administrator shall serve subject to the will and pleasure of the governor. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state hereunder.

Sec. 4. Supplementary Agreements.—The compact administrator is hereby authorized and empowered to enter
3 into supplementary agreements with appropriate officials
4 of other states pursuant to the compact. In the event that
5 such supplementary agreement shall require or contem-
6 plate the use of any institution or facility of this state or
7 require or contemplate the provision of any service by
8 this state, said supplementary agreement shall have no
9 force or effect until approved by the head of the depart-
10 ment or agency under whose jurisdiction said institution
11 or facility is operated or whose department or agency
12 will be charged with the rendering of such service.

Sec. 5. Financial Arrangements.—The compact admin-
2 istrator, subject to the approval of the state auditor, may
3 make or arrange for any payments necessary to discharge
4 any financial obligations imposed upon this state by the
5 compact or by any supplementary agreement entered into
6 thereunder.

Sec. 6. Responsibilities of State Departments, Agencies
2 and Officers.—The courts, departments, agencies and of-
3 ficers of this state and its subdivisions shall enforce this
4 compact and shall do all things appropriate to the effectu-
5 ation of its purposes and intent which may be within
6 their respective jurisdictions.

Sec. 7. Additional Procedures Not Precluded.—In addi-
2 tion to any procedure provided in articles IV and VI of
3 the compact for the return of any runaway juvenile, the
4 particular states, the juvenile or his parents, the courts,
5 or other legal custodian involved may agree upon and
6 adopt any other plan or procedure legally authorized
7 under the laws of this state and the other respective party
8 states for the return of any such runaway juvenile.

CHAPTER 88
(Senate Bill No. 271—By Mr. Barnett and Mr. Floyd)

(Passed March 9, 1963; in effect July 1, 1963. Approved by the Governor.)

AN ACT to amend and reenact section two, article one, chap-
ter twenty-one of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to qualifications; appointment; term of office; and salary of the commissioner of labor.

Be it enacted by the Legislature of West Virginia:

That section two, article one, chapter twenty-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. Commissioner of Labor; Qualifications; Appointment; Term of Office; Salary.—The state commissioner of labor shall be appointed by the governor, by and with the advice and consent of the senate. He shall be a competent person, who is identified with the labor interests of the state. The commissioner of labor in office on the effective date of this act shall, unless sooner removed, continue to serve until his term expires and his successor has been appointed and has qualified. On or before the first day of April, one thousand nine hundred forty-one, and on or before the first day of April of each fourth year thereafter, the governor shall appoint a commissioner of labor to serve for a term of four years, commencing on said first day of April. Notwithstanding the provisions of section two-a, article seven, chapter six of this code, the salary of the commissioner of labor shall be ten thousand dollars per annum.

CHAPTER 89

(House Bill No. 233—By Mr. Speaker, Mr. Singleton, and Mr. Given)

[Passed February 18, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to repeal section sixteen, article one-a, chapter forty-seven of the code of West Virginia, one thousand nine
Be it enacted by the Legislature of West Virginia:

Article 1-a. Regulation and Control of Bedding and Upholstery Businesses.

Section 1. Repeal of section establishing bedding division fund; transfer of balance in fund to general revenue fund.

Section 1. Repeal of Section Establishing Bedding Division Fund; Transfer of Balance in Fund to General Revenue Fund.—Section sixteen, article one-a, chapter forty-seven of the code of West Virginia, one thousand ninety-three, as amended, is hereby repealed, and any unexpended balance in the bedding division fund of the department of labor, established by said section, is hereby transferred to the general revenue fund.

CHAPTER 90

(Com. Sub. for House Bill No. 347—Originating in the House Committee on the Judiciary)

[Passed March 5, 1963; in effect July 1, 1964. Approved by the Governor.]

AN ACT to amend article one, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to deeds of trust conveying personal property.

Be it enacted by the Legislature of West Virginia:

That article one, chapter thirty-eight 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:
Article 1. Vendor’s and Trust Deed Liens.

Section 1-a. Deeds of trust conveying personal property; limitations on application of this article.

Section 1-a. Deeds of Trust Conveying Personal Property; Limitations on Application of this Article.—This article shall not apply to deeds of trust nor to any rights, duties or obligations created thereunder, unless such deed conveys real property or some interest therein.

Deeds of trust conveying personal property are governed by article nine of chapter forty-six of this code. Whenever a deed of trust conveys both real and personal property, such deed may provide as to the sale or other disposition of the personal property involved either that this article or that article nine of chapter forty-six shall apply. If a deed of trust conveys both real and personal property does not so provide, the trustee may elect to proceed under either this article or under article nine of chapter forty-six as to the sale or other disposition of the personal property involved. In all other respects, article nine of chapter forty-six is applicable to the conveyance of personal property by deed of trust whether such deed conveys personal property only or both personal and real property. For purposes of this section, personal property is any property, right or interest in which a security interest under article nine of chapter forty-six of this code may be obtained or created.

CHAPTER 91

(House Bill No. 48—By Mr. Seibert)

[Passed March 9, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, defining the phrase “mentally ill”.

Be it enacted by the Legislature of West Virginia:

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

Article 1. Definitions.
Section 1. Mentally ill.

Section 1. Mentally ill.—For the purposes of this chapter, a “mentally ill” person is (a) one having a psychiatric or other disease which substantially impairs his mental health, or (b) a mental defective.

CHAPTER 92
(Senate Bill No. 56—By Mr. McCourt)

[Passed March 9, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to repeal section eleven, article one-a, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new section eleven, relating to the establishment of a division and program on alcoholism within the department of mental health.

Be it enacted by the Legislature of West Virginia:

That section eleven, article one-a, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and that a new section eleven be enacted in lieu thereof to read as follows:

Article 1-a. Department of Mental Health.
Section 11. Division on alcoholism; powers and duties.

Section 11. Division on Alcoholism; Powers and Duties.
2—There shall be a division on alcoholism in the department of mental health. The supervisor and personnel of this division shall assist the director of the department in the establishment of a program for the care, treatment,
and rehabilitation of alcoholics; for research into the
causes, prevention, and treatment of alcoholism; for the
training of personnel to work with alcoholics; and for the
education of the public concerning alcoholism.

The department's program for the care, treatment, and
rehabilitation of alcoholics may include, when intended
for such purposes, the establishment of special clinics or
wards within, attached to, or upon the grounds of one
or more of the state hospitals under the control of the
department of mental health; the acquisition in the name
of the department of real and personal property and the
construction of buildings and other facilities; the leasing
of suitable clinics, hospitals, or other facilities; and the
utilization, through contracts or otherwise, of the available services and assistance of any professional or non-
professional persons, groups, organizations or institutions
in the development, promotion and conduct of the de-
partment's program.

Neither the department of mental health nor the divi-
sion on alcoholism shall be required to accept any alco-
holic voluntarily seeking hospitalization for clinical or
hospital care, treatment, or rehabilitation; but the de-
partment may accept, pursuant to its adopted and pro-
mulgated rules and regulations, responsibility for clinical
or hospital care, treatment, or rehabilitation of any alco-
holic through arrangements made voluntarily with the
department by him or some person acting in his behalf:
Provided, That any such person accepted by the depart-
ment on a voluntary basis shall be charged a minimum
fee of seven dollars per day, unless he shows, to the satis-
faction of the department, that he is unable to pay said fee.

The department shall accept all alcoholics committed
by a county mental hygiene commission in accordance
with the procedure of article six of this chapter; but not-
withstanding any provision in said article six which may
be to the contrary, the supervisor of the division on alco-
holism may, in his discretion, specify the clinic or hos-
pital to which the alcoholic shall be committed.

The department's program of research into the causes,
prevention, and treatment of alcoholism may include the
utilization, through contracts or otherwise, of the available
services and assistance of any professional or nonprofession-
al persons, groups, organizations or institutions, as well
as cooperation with private and public agencies engaged
in research in alcoholism or rehabilitation of alcoholics.

The department's program on alcoholism shall also pro-
vide for the training of personnel to work with alcoholics
and the informing of the public as well as interested
groups and persons concerning alcoholism and the pre-
vention and treatment thereof.

The department may employ such medical, psychiatric,
psychological, secretarial and other assistance as may be
necessary to carry out the provisions of this section.

As used in this section,

(a) "Alcoholic" shall mean any person who chronically
and habitually uses alcoholic beverages to the extent that
he has lost the power of self-control as to the use of such
beverages, or, while chronically and habitually under the
influence of alcoholic beverages, endangers public morals,
health, safety or welfare.

(b) "Alcoholism" shall mean the condition of abnormal
behavior or illness resulting directly or indirectly from
the chronic and habitual use of alcoholic beverages.

CHAPTER 93

(House Bill No. 378—By Mr. Speaker, Mr. Singleton,
and Mr. Vickers)

[Passed March 6, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article one;
and sections five, seven, nine, fourteen, twenty-eight,
twenty-nine, thirty-nine, forty-three, forty-six, fifty-seven,
fifty-eight, sixty-two and seventy-eight, article two, all
of chapter twenty-two of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to coal mines.
Be it enacted by the Legislature of West Virginia:

That section twenty, article one; and sections five, seven, nine, fourteen, twenty-eight, twenty-nine, thirty-nine, forty-three, forty-six, fifty-seven, fifty-eight, sixty-two and seventy-eight, article two, all of chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Article
1. Administration; Enforcement.
2. Coal Mines.

Article 1. Administration; Enforcement.

Section 20. Mine rescue crews.

Section 20. Mine Rescue Crews.—The director of the state department of mines is hereby authorized to have trained and employed at the rescue stations operated by that department within the state, such rescue crews as he may deem necessary. Each member of a rescue crew shall devote four hours each month for training purposes, and shall be available at all times to assist in rescue work at explosions and mine fires. Regular members shall receive for such services the sum of seven dollars per month and captains shall receive eight dollars per month, payable on requisition approved by the director of the department of mines. The director of the department of mines may remove any member of a rescue crew at any time.

To qualify for membership of a mine rescue crew an applicant shall: (a) be not less than twenty-three years of age; (b) submit evidence of good health satisfactory to the director of the department of mines; (c) satisfactorily complete a course of training prescribed by the director of the department of mines. Each person so qualifying for mine rescue operations and passing a physical examination by a licensed physician shall receive a certificate evidencing such qualification. Annually thereafter such person shall submit evidence to the director that he has been examined by a licensed physician and found physically fit for mine rescue operations.

When engaged in rescue work required by an explosion,
fire or other emergency at a mine, all members of mine
rescue teams assigned to rescue operations shall, during
the period of their rescue work, be employees of the
operator of the mine where the emergency exists; shall
be compensated by said operator at the rate established
in the area for such work. In no case shall this rate be
less than the prevailing wage rate in the industry for
the most skilled class of inside mine labor. During the
period of their emergency employment members of mine
rescue teams shall be protected by the workmen's com-
penation subscription of such emergency employer.

Article 2. Coal Mines.

Section 5. Ventilation of Mines in General.—The oper-
ator or mine foreman of every coal mine, whether worked
by shaft, slope or drift, shall provide and maintain for every such mine adequate ventilation. In
all mines the quantity of air passing through the last open
crosscut between the intake and return in any set of
entries shall be not less than six thousand cubic feet
of air per minute, and as much more as is necessary to
dilute and render harmless and carry away flammable
and harmful gases: Provided, however, That the quan-
tity of air reaching the last crosscut in pillar sections
may be less than six thousand cubic feet per minute if
at least six thousand cubic feet of air per minute is being
delivered to the intake of the pillar line. The air current
shall under any conditions have a sufficient volume and
velocity to reduce and carry away smoke from blasting
and any flammable or harmful gases. All active underground working places in a mine shall be ventilated by a current of air containing not less than nineteen and five-tenths per cent of oxygen, and not more than one per cent of carbon dioxide, and no harmful quantities of other noxious or poisonous gases.

As working places advance, crosscuts for air shall be made not to exceed eighty feet apart. Where necessary to render harmless and carry away noxious or flammable gases, line brattice or other approved methods of ventilation shall be used so as to properly ventilate the face. All crosscuts between the main intake and return airways not required for passage of air and equipment shall be closed with stoppings substantially built with incombustible or fire-resistive material so as to keep working places well ventilated: Provided, however, That in mines where it becomes necessary to provide larger pillars for adequate roof support, working places shall not be driven more than two hundred feet without providing a connection that will allow the free flow of air currents. In such cases a minimum of twelve thousand cubic feet of air a minute shall be delivered to the last open crosscut and as much more as is necessary to dilute and render harmless and carry away flammable and noxious gases.

In special instances for the construction of sidetracks, haulageways, airways, or openings in shaft bottom or slope bottom layout where the size and strength of pillars is important, the director of the department of mines may issue a permit approving greater distances. The permit shall specify the conditions under which such places may be driven.

In gassy mines a system of bleeder openings or air courses designed to provide positive movement of air through and/or around abandoned or caved areas, sufficient to prevent dangerous accumulation of gas in such areas and to minimize the effect of variations in atmospheric pressure, shall be made a part of pillar recovery plans projected after the effective date of this article.

If a bleeder return is closed as a result of roof falls or
57 water during pillar recovery operations, pillar operations
58 may continue without reopening the bleeder return so
59 long as a minimum of twelve thousand cubic feet of air
60 per minute is delivered to the intake of the pillar line.
61 Not more than sixty persons shall be permitted to
62 work in the same air current: *Provided*, That a larger
63 number, not exceeding eighty persons, may be allowed
64 by the director of the department of mines where it is
65 impracticable to comply with the foregoing require-
66 ments.
67 No operator or mine foreman shall permit any persons
68 to work where they are unable to maintain the quantity
69 and quality of the air current as heretofore required:
70 *Provided, however*, That such provision shall not pro-
71 hibit the employment of men to make places of employ-
72 ment safe.
73 The ventilation of any mine shall be so arranged by
74 means of airlocks, overcasts, or undercasts, that the use
75 of doors on passageways where men or equipment travel
76 may be kept to a minimum. Where doors are used in a
77 gassy mine they shall be erected in pairs so as to provide
78 a ventilated airlock, unless the doors are operated
79 mechanically: *Provided, however*, That such provision
80 shall not apply to doors in or between panel or room
81 entries. In mines not classified as gassy, single doors
82 may be used, provided such doors are closed promptly
83 after men or equipment have passed through them.
84 Overcasts or undercasts shall be constructed of incom-
85 bustible material and maintained in good condition.
86 Where practicable, a crosscut shall be provided at or near
87 the face of each entry or room before such places are
88 abandoned.
89 Rooms, entries, airways, or other working places shall
90 not be driven in advance of air currents. Such provisions
91 shall not prohibit, as the room, entry or aircourse ad-
92 vances, the “necking” of any place for a distance which
93 shall not exceed that actually required for the install-
94 ation of mining equipment in use at this location: *Pro-
95 vided, however*, That such room necks or entries are kept
Sec. 7. Gassy Mines; Nongassy Mines; Examination.—
In a gassy mine, within four hours immediately preceding the beginning of a coal-producing shift, and before any workman in such shift, other than those who may be designated to make the examinations, enters the underground areas of such mine, a certified foreman or fireboss, designated by the operator of such mine to do so, shall make an examination of such areas.

In a gassy mine, on a noncoal-producing shift, within four hours of the time when noncertified men enter the mine, the areas where they are assigned to work, and the entrances to adjacent areas shall be examined by a certified foreman or fireboss for gas and other dangerous conditions; no uncertified man shall enter any area which has not been properly examined by a certified foreman or fireboss; all energized trolley lines and bare feeder lines along haulageways shall be examined at least once every eight hours by a certified foreman or fireboss. All areas not being so examined shall have an approved danger board posted at the entrance or entrances.

In nongassy mines examinations, which shall include tests for explosive gas or oxygen deficiency made with an approved flame safety lamp, shall be made at the same times as are required for a gassy mine. The person delegated to make such examinations shall be certified. Record of such examination shall be made in a book prescribed for that purpose.

Sec. 9. Same; Duties; Ventilation; Loose Coal, Slate or Rock; Props; Drainage of Water; Man Doors.—The duties of the mine foreman shall be to keep a careful watch over the ventilating apparatus, the airways, traveling ways, pumps and drainage. He shall see that, as the miners advance their excavations, proper breakthroughs are made so as to properly ventilate the mine; that all loose coal, slate and rock overhead in the working places and along the haulways are removed or carefully secured so as to prevent danger to persons employed in such mines, and that sufficient suitable props, caps, timbers, roof bolts, or
other approved methods of roof supports are furnished for the places where they are to be used, and delivered at suitable points. The mine foreman shall have all water drained or hauled out of the working places where practicable, before the miners enter, and such working places shall be kept dry as far as practicable while the miners are at work. It shall be the duty of the mine foreman to see that proper crosscuts are made, and that the ventilation is conducted by means of such crosscuts through the rooms by means of checks or doors placed on the entries or other suitable places, and he shall not permit any room to be opened in advance of the ventilating current. On and after July first, one thousand nine hundred sixty-three, the mine foreman, or other certified persons designated by him, shall measure the air current with an anemometer at least weekly at the inlet and outlet at or near the faces of the advanced headings, and shall keep a record of such measurements in a book or upon a form prescribed by the director of the department of mines. Signs directing the way to outlets or escapeways shall be conspicuously placed throughout the mine.

On and after July first, one thousand nine hundred sixty-three, man doors shall be installed between the intake and the return at intervals of three hundred feet when the height of the coal is below forty-eight inches and at intervals of five hundred feet when the height of the coal is above forty-eight inches; unless provision is made for entrance into the main returns near the mouth of each set of panel entries.

Sec. 14. Same; Daily Inspection of Working Places; Records.—The mine foreman or his assistants shall visit and carefully examine each working place in the mine at least once each shift while the miners of such places are at work, and shall direct that each working place shall be secured by props, timbers, roof bolts, and/or other approved methods of roof support where necessary to the end that the working places shall be made safe. Should the mine foreman or his assistants find a place to be in a dangerous condition, they shall not leave the place until
it is made safe, or shall remove the persons working therein until the place is made safe by some competent person designated for that purpose.

He shall place his initials and the date at or near each place he examines. He shall also record any dangerous conditions and practices found during his examination in a book provided for that purpose.

Sec. 28. Roof Support.—Minimum timbering or other roof support methods suitable to the roof conditions and mining system of each mine or part of a mine shall be adopted and complied with. A copy of the adopted roof support plan shall be posted at the mine and a copy furnished to the district mine inspector. Additional timbering or supporting shall be used when and where necessary. It shall be the duty of the mine foreman or his subordinate supervisors to instruct all workmen in proper methods of setting timbers or placing roof supports; and, it shall be the duty of the workmen to comply with the instruction in setting timbers and roof supports. The roof in all underground working places, unless self-supporting, shall be secured to protect employees from falls. Safety posts, jacks, or temporary crossbars shall be set close to the face when necessary for safety before other operations are begun and as needed thereafter. Where roof supports are required at the working faces, persons shall not advance beyond supported roof, except those who are assigned to install supports. Timbering or roof support materials to be used as required in supporting the roof in underground workings shall be delivered at or near the working faces. In hand loading mines, the miner shall order timbers and roof support materials at least one day in advance in order to have in his working place a sufficient supply for his needs. He shall place his order with his supervisor stating his requirements. Roof bolts shall not be used in lieu of conventional timbering unless a permit has been issued by the state department of mines. Roof bolts shall not be recovered where complete extraction of pillars is attempted; nor shall bolts be removed adjacent to clay veins; nor at the location of other irregularities that introduce abnormal hazards. Where roof bolt recovery is practiced, it shall be done
only by reasonable methods approved by the director of
the department of mines. Recovery of roof supports shall
not be done except by experienced persons and only
where adequate temporary support is provided.

Sec. 29. Authorized Explosives; Storage or Use of Un-
authorized Explosives.—Permissible explosives or per-
missible blasting devices only shall be used in blasting
coil or other material in underground coal mines. It shall
be unlawful to have, use or store any nonpermissible
explosives or nonpermissible blasting devices in any coal
mine or on the premises of the mine, without a permit
from the director.

Sec. 39. Electricity; General Provisions.—Operators of
coil mines in which electricity is used as a means of
power shall comply with the following provisions:

All surface transformers, unless of a construction which
will eliminate shock hazards, or unless installed at least
eight feet above ground, shall be enclosed in a house or
surrounded by a fence at least six feet high. If the en-
closure is of metal, it shall be grounded effectively. The
gate or door to the enclosure shall be kept locked at all
times, unless authorized persons are present.

Underground transformers purchased after the effective
date of this article, shall be air cooled or cooled with non-
inflammable liquid or inert gas.

Underground stations containing transformers or circuit
breakers filled with inflammable oil shall be provided
with door sills or their equivalent, which will confine the
oil if leakage or explosion occurs, and shall be of fire-
proof construction.

Transformers shall be provided with adequate overload
protection.

Portable or semiportable battery charging units shall
be operated on a separate split of air: Provided, however,
That such units may be operated on intake air if a mini-
mum of fifteen thousand cubic feet per minute is cir-
culating for one tray of batteries and five thousand cubic
feet per minute additional for each tray added. The rate
of charging by such units shall not be less than four hours
to fully charge a tray of batteries.
Battery charging stations, motor generator sets, rotary converters and oil filled transformers and switches, used underground shall be housed in fireproof buildings ventilated by a separate split of air direct to the main return (rectifiers excepted).

All power wires and cables entering a mine shall be provided with lightning arrestors at points of entry.

"Danger—high voltage" signs shall be posted conspicuously on all transformer enclosures, high-potential switchboards and other high-potential installations.

Circuit breakers or other overload devices shall be provided to protect power circuits.

Insulating platforms of wood, rubber, or other suitable nonconductive material shall be kept in place at each switchboard, and at stationary machinery where shock hazards exist.

All power wires and cables in hoisting shafts, slopes and power bore holes shall be properly insulated, provided with lightning arrestors, substantially installed and well maintained.

All power wires, except trailing cables, especially designed cable used as electrical conductors to underground-rectifier or transformer stations, portable power cables or bare or insulated ground and return wires, shall be supported on well-installed insulators and shall not contact combustible material, roof or ribs.

Trolley and feeder wires shall be installed as follows:

Where installed on permanent haulage, after the effective date of this article, they shall be: (1) At least six inches outside the track gauge line; (2) provided with cutout switches at intervals of not more than two thousand feet, and near the beginning of all branch lines; and (3) kept taut and not permitted to touch the roof, rib, or crossbars. Particular care shall be taken where they pass through door openings to preclude bare wires from coming in contact with combustible material.

Trolley or bare feeder cables shall be guarded adequately where it is necessary for men to pass or work under them regularly unless the wires are more than six and one-half feet above the top of the rail. They shall
also be guarded adequately on both sides of doors, and at all stations designated for the loading and unloading of man trips, and at sand boxes.

After the effective date of this article, in new underground installations of electric face equipment in new mines the difference in potential between any two points in the electrical circuits, or between any point in the electrical circuits and the ground, shall not exceed six hundred and fifty volts. No provision of this section shall prohibit the use of higher voltages of alternating current on service lines to rectifiers, converters, transformers or switches connected thereto located in areas out by the immediate face regions.

In a gassy mine, trolley and feeder wires shall not extend beyond the last open crosscut and shall be kept at least one hundred and fifty feet from open pillar workings. Trolley wires and feeder wires shall be anchored securely, insulated, and properly identified at the ends. Metallic frames, casings, and other enclosures of stationary electric equipment that can become “alive” through failure of insulation or by contact with energized parts shall be grounded effectively, or equivalent protection shall be provided.

Sec. 43. Electric Equipment in Gassy Mines.—After the effective date of this article all electric face equipment acquired for use in a mine classified as gassy shall be permissible: Provided, however, That nonpermissible electric equipment may be used in a mine classified as gassy if, before the effective date of this article or the date such mine became a mine classified as gassy, whichever is later, the operator of such mine, or his successor, owned or leased such equipment or had ordered such equipment.

Electric equipment shall not be taken into or operated in any place where methane can be detected with a flame safety lamp at any point not less than eight inches from the roof, face, or rib.

In a mine classified as gassy, electric haulage locomotives operated from trolley wire and other electrical equipment or devices which may ignite gas shall not be
used in return air. For the purpose of this provision, air
used to ventilate a section of a mine shall not be consid-
ered return air until such time as the air has ventilated
all of the workings in the section.

No person shall be placed in charge of a coal-cutting
machine in any mine classified as gassy, who is not a com-
petent person, capable of determining the safety of the
roof and sides of the working places and detecting the
presence of explosive gas. Machine runners in mines
classified as gassy shall be required to undergo examina-
tion by a mine foreman to determine their fitness to de-
tect explosive gas before they are permitted to have
charge of machines in such mines, unless they are accom-
panied by a certified or competent person who has passed
such an examination.

In any mine classified as gassy, a coal-cutting machine
shall not be brought in by the last breakthrough next to
the working face until the machine man shall have made
an inspection for gas in the place where the machine is
to work, unless such examination is made by some other
competent person authorized and designated for that pur-
pose by the mine foreman. If explosive gas in excess of
one per cent is found in the place, the machine shall not
be taken in until the danger is removed.

In working places where explosive gas is likely to be
encountered, a safety lamp, or other suitable approved ap-
paratus for the detection of explosive gas, shall be pro-
vided for use with each mining machine when working,
and should any indication of explosive gas in excess of one
per cent appear on the flame of the safety lamp, or on
other apparatus used for the detection of explosive gas,
the person in charge shall immediately stop the machine,
cut off the current at the nearest switch and report the
condition to the mine foreman or supervisor. The ma-
chine shall not again be started in such place until the
mine foreman, supervisor, or a person authorized by one
of them has examined it and pronounced it safe.

No coal-cutting machine, loading machine or electric
drills shall be operated in a mine classified as gassy for a
longer period than thirty minutes, and no continuous
miner for a longer period than twenty minutes, without
an examination as above described being made for gas,
and if gas is found in excess of one per cent the current
shall at once be switched off the machine, and the trail-
ing cable shall forthwith be disconnected from the power
supply until the place is pronounced safe.

Machine runners and helpers shall use care while oper-
atting mining machines. They shall not permit any per-
son to remain near the machine while it is in operation.
They shall examine the roof of the working place and
see that it is safe before starting to operate the machine.
They shall not move the machine while the cutter chain
is in motion.

Sec. 46. Welding and Cutting; Blowtorches; Fuel.—
Blowtorches may be used by competent persons in mines,
provided (1) suitable precautions are taken against ig-
nition of methane, coal dust, or combustible materials,
(2) means are provided for prompt extinguishment of
fires accidentally started, and (3) fuel is properly con-
trolled. Blowtorches must be maintained at all times in
good operating condition and leakproof.

Fuel for blowtorches, in quantities not exceeding one
day’s supply, shall be transported from the surface in
approved safety cans, leakproof and sturdy. In transfer-
ing fuel to the torch, a funnel or flexible nozzle shall be
used to avoid spillage, and neither the supply can nor the
torch shall be opened within twenty-five feet of any
open light or other thing containing or apt to contain fire,

Welding and cutting may be done in mines: Provided,
That all equipment and gauges are maintained in good
order and not abused, that suitable precautions are taken
against ignition of methane, coal dust, or combustible ma-
terials, that means are provided for prompt extinguish-
ment of fires accidentally started, and that only persons
who have demonstrated competency in welding and
cutting are entrusted to do this work. Adequate eye pro-
tection shall be used by all persons doing welding or
cutting, and precautions shall be taken to prevent other
27 persons from exposure that might be harmful to their
28 eyes.
29
30 Transportation of oxygen and gas tanks or cylinders
31 shall be permitted on self-propelled machinery or belt
32 conveyors specially equipped for safe holding of the
33 containers in transportation. In no instance, shall such
34 transportation be permitted in conjunction with any man
35 trip.
36
37 Empty oxygen and gas tanks or cylinders shall be
38 marked "empty" and shall be removed from the mine
39 promptly in safe containers provided for transportation
40 of the same.
41
42 The valve protection caps shall be placed on all tanks
43 or cylinders for which caps are provided when not in
44 use and when being transported. No oxygen or gas tanks
45 or cylinders shall be transported with the hoses and
46 gauges attached thereto.
47
48 In mines classed as gassy, a certified person shall ex-
49amine for gas with permissible flame safety lamps before
50 and during welding or cutting in, at or near working
51 faces. The safety of the equipment and methods used in
52 such cases shall be subject to approval of the director of
53 the department of mines.

Sec. 57. No Act Permitted Endangering Security of
2 Mine; Search for Intoxicants, Matches, etc.—No miner, 
3 workman or other person shall knowingly injure any 
4 shaft, lamp, instrument, air course, or brattice, or ob-
5 struct or throw open airways, or carry matches or open 
6 lights in the places worked by safety lights, or disturb 
7 any part of the machinery or appliances, open a door 
8 closed for directing ventilation and not close it again, or 
9 enter any part of a mine against caution, or disobey any 
10 order of any mine foreman or assistant mine foreman 
11 given in carrying out any of the provisions of this sec-
12 tion.
13
14 Open lights, smoking, and smokers' articles including 
15 matches, are prohibited in all mines. No person shall at 
16 any time enter mines with or carry therein any 
17 matches, pipes, cigars, cigarettes, or any device for mak-
ing lights or fire not authorized or approved. The operator shall at frequent intervals, search, or cause to be searched, any person, including his clothing and material belongings, entering or about to enter the mine, or inside the mine to prevent such person from taking or carrying therein any of the above-mentioned articles.

No person shall at any time carry into any mine any intoxicants or enter any mine while under the influence of intoxicants.

Sec. 58. Fire Protection.—Suitable fire protection shall be provided at surface installations of fans, shops, tipples and preparation plants, substations, hoist rooms and compressor stations.

Underground storage places for lubricating oil and grease in excess of two days’ supply shall be of fireproof construction.

Lubricating oil and grease kept in face regions or other underground working places in a mine shall be in portable, closed approved containers.

At underground shops and oil storage stations, oily rags, oily waste and waste paper shall be kept in closed metal containers until removed for disposal.

Suitable underground fire protection shall be provided at stationary substations and compressor stations, shops, pumps, doors, transformer stations, battery charging stations, where oil and grease is stored, at conveyor loading or discharge points and strategic points along rubber belt lines, stables, and on active working sections.

Rock dust in quantities of five hundred pounds or more shall be considered suitable for fire protection at the above-mentioned underground locations, except that a fire extinguisher suitable for the hazards present shall be provided as an additional protection at underground shops, permanent substations, compressor stations, battery charging stations and transformer stations.

Mine openings, where there is danger of fire entering the mine, shall have adequate protection against surface fires or dangerous volumes of smoke entering the mine.
Sec. 62. No Mine to be Opened or Reopened without Prior Approval of Director of Department of Mines; Approval Fee; Extension of Certificates of Approval; Certificates Not Transferable; Section to Be Printed on Certificates.—After the effective date of this section, no mine shall be opened or reopened unless prior approval has been obtained from the director of the department of mines, which approval shall not be unreasonably withheld. The operator shall pay for such approval a fee of ten dollars, which payment shall be tendered with the operator’s application for such approval: Provided, however, That mines producing coal solely for the operator’s use shall be issued a permit without charge if coal production will be less than fifty tons a year.

Within forty-five days after January first of each year the operator of each mine holding a certificate evidencing approval of the director to open a mine, shall apply for the extension of such certificate of approval for an additional year. Such approval, evidenced by a certificate of the director, shall be granted as a matter of right and without charge if at the time such application is made the operator is in compliance with the provisions of section seventy-four of this article. Applications for extension of such certificates of approval not submitted within the time required shall be processed as an application to open or reopen a mine and shall be accompanied by a fee of ten dollars.

Certificates of approval issued pursuant to this section shall not be transferable.

The provisions of this section shall be printed on the reverse side of every certificate issued hereunder.

Sec. 78. Penalties.—Any person who shall wilfully violate sections two, seven, twelve, nineteen, twenty-two, twenty-three, twenty-four, twenty-seven, twenty-nine, thirty-three, fifty-seven, fifty-eight, sixty, sixty-two, seventy, seventy-one, seventy-four, seventy-five or seventy-seven of this article shall be fined not less than ten nor more than five hundred dollars.
CHAPTER 94
(Com. Sub. for House Bill No. 353—Originating in the House Committee on Mining)

[Passed March 9, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty-two, article one, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article two-a, chapter twenty-two of said code by adding thereto a new section, designated section fourteen, relating to leasing of lands owned by the state for strip mining of coal.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article one, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article two-a, chapter twenty-two of said code be amended by adding thereto a new section, designated section fourteen, to read as follows:

Article 2-a. Surface Mining.

Section 14. Leasing of lands owned by the state for strip mining coal therefrom.

Section 14. Leasing of Lands Owned by the State for Strip Mining Coal Therefrom.—No land or interest in land owned by the state shall be leased, and no present lease shall be renewed by the state, nor any agency of the state, for the purpose of conducting surface mining operations thereon, unless said lease or renewal shall have been first authorized by an act of the Legislature.

CHAPTER 95
(Senate Bill No. 219—By Mr. Carson, Mr. President, and Mr. Jackson)

[Passed March 4, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, nine and fourteen, article four, chapter twenty-two of the
code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article four by adding thereto twelve new sections, designated sections one-a, one-b, one-c, one-d, one-e, one-f, one-g, one-h, one-i, one-j, two-a and eighteen, all relating to oil and gas generally and providing certain definitions of terms; providing that well operators must file plats and give notice; specifying the contents of such plats; requiring permits to drill; requiring permits to fracture oil and/or gas wells originally drilled before the fifth day of June, one thousand nine hundred twenty-nine; specifying the circumstances under which such permits to drill or fracture shall be issued; requiring a performance bond as a condition precedent to the issuance of a permit or permits to drill, or a permit or permits to fracture oil and/or gas wells originally drilled before the fifth day of June, one thousand nine hundred twenty-nine; permitting objections to proposed location of oil and/or gas wells and to proposed fracturing; providing for hearing on objections; authorizing parties to agree on drilling location and the conditions under which fracturing is to take place for the protection of life and property; authorizing department of mines to fix location of oil and/or gas wells and the conditions under which fracturing is to take place for the protection of life and property; providing for exceptions to drilling locations and to conditions of fracturing fixed by department of mines; providing for docket of proceedings; permitting judicial review of drilling location fixed or approved, and of the conditions of fracturing fixed or approved for the protection of life and property, by department of mines, and of the issuance of any drilling or fracturing permit, and providing for proceedings upon such judicial review; requiring notice of intention to plug and abandon oil and/or gas wells; providing for plugging and abandonment of oil and/or gas wells; providing for plugging and abandonment of oil and/or gas wells upon obtaining certain approval in writing; requiring a performance bond as a condition precedent to plugging and abandonment of a well; requiring an affidavit showing the time and manner of plugging and filling an oil and/or gas well or wells; providing that natural gas shall not be unreasonably wasted; requiring filing with depart-
inent of mines of plans of operation for wasting gas to produce oil; permitting rejection of such plans by department of mines; establishing in the department of mines the office of deputy director for oil and gas; specifying the powers, duties, salary and oath of such deputy director; requiring a bond of such deputy director; providing for expenses of such deputy director; establishing the eligibility requirements for such deputy director; providing for the appointment, tenure and removal of not more than eight district oil and gas inspectors and a supervising inspector; providing for the examination of candidates for appointment as oil and gas inspectors and for appointment as a supervising inspector; providing for a register of certified eligible candidates for appointment as oil and gas inspectors and as supervising inspector; providing for the removal of names from such register and under certain circumstances the reinstatement thereof; specifying the oath, bond and salary of oil and gas inspectors and supervising inspector; providing for expenses of oil and gas inspectors and supervising inspector; establishing the eligibility requirements and qualifications of persons desiring to serve as oil and gas inspectors and as supervising inspector; providing procedures for removal of oil and gas inspectors and supervising inspector; establishing the oil and gas inspectors' examining board; specifying the qualifications of persons to serve on such board; providing for the appointment of members of such board; providing a per diem and mileage allowance for the members of such board; specifying an oath for the members of such board; providing for meetings of such board; specifying the powers and duties of such board; authorizing the deputy director for oil and gas, oil and gas inspectors and the supervising inspector to visit and inspect oil and/or gas wells, well sites and any other oil and/or gas facilities; requiring the owner or operator of every oil and/or gas well, well site or any other oil and/or gas facility to cooperate with the deputy director for oil and gas, all oil and gas inspectors and the supervising inspector in making inspections or obtaining information; specifying the duties of oil and gas inspectors and of the supervising inspector; providing for findings and orders of oil and gas inspectors;
providing for special inspections; providing for notice of findings and orders; providing for review by deputy director for oil and gas of findings and orders of oil and gas inspectors; providing for notice of findings and orders made after review by such deputy director; specifying the manner in which findings and orders must be made and notice thereof given; permitting judicial review of final orders of deputy director for oil and gas concerning inspection of oil and/or gas wells, well sites and any other oil and/or gas facility; providing the method and manner of applying for such judicial review; providing for proceedings upon judicial review; providing that well operators must give notice to coal operators and department of mines of intention to fracture certain other wells; specifying the contents of such notice; requiring permits to fracture such other wells; specifying the circumstances under which such permits to fracture such other wells shall be issued; and providing for injunctive relief.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, nine and fourteen, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article four be further amended by adding thereto twelve new sections, designated sections one-a, one-b, one-c, one-d, one-e, one-f, one-g, one-h, one-i, one-j, two-a and eighteen, all to read as follows:

Article 4. Oil and Gas Wells.

Section
1. Definitions.
1-a. Deputy director for oil and gas; appointment; powers and duties generally; departmental records open to public.
1-b. Same; eligibility; salary; expenses; oath and bond.
1-c. Oil and gas inspectors; supervising inspector; appointment and tenure; conflict of interest; oath and bond; duties generally.
1-d. Same; eligibility for appointment; qualifications; salary; expenses; removal.
1-e. Oil and gas inspectors' examining board; creation; composition; appointment, term and compensation of members; chairman; oaths of members; meetings; powers and duties generally.
1-f. Authority and duty of deputy director and inspectors to visit and inspect wells and facilities; inspectors to devote full time to duties.
1-g. Findings and orders of inspectors concerning violations; determination of reasonable time for abatement; extensions of time for abatement; special inspections; notice of findings and orders.
1-h. Review of findings and orders by deputy director for oil and gas; special inspectors; annulment, revision, etc., of order; notice.

1-i. Requirements for findings, orders and notices; posting of findings and orders.

1-j. Judicial review of final orders of the deputy director for oil and gas.

2. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators; issuance of permits; performance bonds or securities in lieu thereof.

2-a. Notice to coal operators and department of mines of intention to fracture certain other wells; contents of such notice; permit required.

3. Objections to proposed drilling or fracturing; notices and hearings; agreed location or conditions; location or conditions fixed by department of mines; indication of changes on plats, etc.; issuance of permits; docket of proceedings.

4. Appeal by coal operator or well operator from drilling location fixed or approved, or from the conditions of fracturing fixed or approved, by department of mines or from issuance of permit to drill or fracture; procedure.

9. Plugging and abandonment of well; notice of intention; performance bond or securities in lieu thereof; affidavit showing time and manner.

14. Preventing waste of gas; plans of operation required for wasting gas in process of producing oil; rejection thereof.

18. Injunctive relief.

Section 1. Definitions.—The term "well" when used in this article, means a bore hole drilled or proposed to be drilled for the purpose of producing natural gas and/or petroleum, or through which natural gas and/or petroleum is being produced; the terms "oil and/or gas facility" when used in this article, mean any facility utilized in the oil and gas industry in this state and specifically named or referred to in this article or in articles five or seven of this chapter, other than a well or well site; the term "owner," when used with reference to any such well, shall include any person or persons, firm, partnership, partnership association or corporation that owns, manages, operates, controls or possesses such well as principals, or as lessee or contractor, employee or agent of such principal; the term "well operator" shall include any person or persons, firm, partnership, partnership association or corporation that proposes to or does locate, drill, operate or abandon any well as herein defined; the term "coal operator" shall include any person or persons, firm, partnership, partnership association or corporation that proposes to or does operate a coal mine; the term "department" or "department of mines" includes the duly con-
stituted authorities under the laws of this state having jurisdiction over coal mining operations; the term "plat" means a map, drawing or print showing the location of a well or wells as herein defined; the term "casing" means a string or strings of pipe commonly placed in wells drilled for natural gas and/or petroleum; the terms "oil" and "gas" are synonyms for petroleum and natural gas respectively; the term "cement" means hydraulic cement properly mixed with water only; the term "workable coal bed" means a coal bed in fact being operated commercially, or which, in the judgment of the department of mines, can, and that it is reasonably to be expected will, be so operated, and which, when operated, will require protection if wells are drilled through it.

Sec. 1-a. Deputy Director for Oil and Gas; Appointment; Powers and Duties Generally; Departmental Records Open to Public.—There shall be an employee of the department whose title shall be "deputy for oil and gas," who shall be appointed by the director to serve at the will and pleasure of the director. The deputy director for oil and gas shall have full charge of the oil and gas matters set out in this article and in articles five and seven of this chapter, subject always to the direct supervision and control of the director of the department of mines. As such, the deputy director for oil and gas shall have the power and duty to:

(1) Supervise and direct the execution and enforcement of the provisions of this article and articles five and seven of this chapter;

(2) Employ a supervising oil and gas inspector and not more than eight district oil and gas inspectors upon approval by the director, such clerks, stenographers and other employees as may be approved by the director, at compensation fixed by the director, except as otherwise provided in this article;

(3) Supervise and direct such oil and gas inspectors and supervising inspector in the performance of their duties;

(4) Suspend for good cause any oil and gas inspector or supervising inspector without compensation for a period not exceeding thirty days in any calendar year;
(5) Prepare report forms to be used by oil and gas inspectors or the supervising inspector in making their findings, orders and notices, upon inspections made in accordance with this chapter;

(6) Hear and determine applications made by owners, well operators, and coal operators for the annulment or revision of orders made by oil and gas inspectors or the supervising inspector, and to make inspections, in accordance with the provisions of this article and articles five and seven of this chapter;

(7) Cause a properly indexed permanent and public record to be kept of all inspections made by himself or by oil and gas inspectors or the supervising inspector;

(8) Make annually a full and complete written report to the director of the department of mines in such form and detail as the director may from time to time request, so that the director can complete the preparation of the director's annual report to the governor of the state;

(9) Conduct such research and studies as the director shall deem necessary to aid in protecting the health and safety of persons employed within or at potential or existing oil or gas production fields within this state, to improve drilling and production methods and to provide for the more efficient protection and preservation of oil and gas-bearing rock strata and property used in connection therewith;

(10) Perform all other duties which are expressly imposed upon him by the provisions of this chapter, as well as duties assigned to him by the director of the department of mines.

All records of the department shall be open to the public.

Sec. 1-b. Same; Eligibility; Salary; Expenses; Oath and Bond.—The deputy director for oil and gas shall be a citizen of West Virginia, shall be a competent person of good reputation and temperate habits and shall have had at least ten years' practical experience in the oil and gas industry, at least five of which shall have been in this state. A diploma in geology or in mining or petroleum engineering from West Virginia University, or any simi-
larly accredited school shall be counted as two years' practical experience. The deputy director for oil and gas shall devote all of his time to the duties of his office, and shall not be directly or indirectly interested financially in any oil and/or gas production or drilling or in any coal mine in this state. The salary of the deputy director for oil and gas shall be not less than seven thousand five hundred dollars nor more than ten thousand dollars per year, and traveling expenses, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by the director of the department of mines.

The deputy director for oil and gas shall, before entering upon the discharge of his duties, take the oath of office prescribed by section five, article four of the constitution, and shall execute a bond in the penalty of two thousand dollars, with security to be approved by the director of the department of mines, conditioned upon the faithful discharge of his duties, a certificate of which oath and which bond shall be filed in the office of the secretary of state.

Sec. 1-c. Oil and Gas Inspectors; Supervising Inspectors; Appointment and Tenure; Conflict of Interest; Oath and Bond; Duties Generally.—Notwithstanding any other provisions of law, oil and gas inspectors shall be selected, serve and be removed as in this article provided.

The deputy director for oil and gas shall divide the state into not more than eight oil and gas districts, so as to equalize, as far as practical, the work of each oil and gas inspector. He shall assign inspectors to districts, and designate a supervising inspector and shall designate their places of abode at points convenient to the accomplishment of their work. In the event the oil and gas inspectors' examining board is unable to provide an adequate register of certified eligible candidates for appointment prior to the first day of July, one thousand nine hundred sixty-three, the appointment of the supervising inspector and other inspectors shall be deferred until an adequate register is available: Provided, That notwithstanding any other provisions contained in this article, those persons serving as oil and gas inspectors on the effective date of
this act may be appointed as oil and gas inspectors with permanent tenure if such persons pass the examinations conducted by the oil and gas inspectors’ examining board in accordance with the provisions of sections one-d and one-e.

All other oil and gas inspectors, including the supervising inspector, shall be appointed from the names on such register. Each original appointment shall be made by the deputy director for oil and gas, and shall be approved by the director of the department of mines, for a probationary period of not more than one year.

The deputy director for oil and gas shall make each appointment from among the three qualified eligible candidates on the register having the highest grades: Provided, however, That the director of the department of mines or the deputy director for oil and gas may, for good cause, at least thirty days prior to making an appointment, strike any name from the register. Upon striking any name from the register, the director or deputy director, as the case may be, shall immediately notify in writing each member of the oil and gas inspectors’ examining board of his action, together with a detailed statement of the reasons therefor. Thereafter, the oil and gas inspectors’ examining board, after hearing, if it finds that the action of striking such name was arbitrary or unreasonable, may order the name of any candidate so stricken from the register to be reinstated thereon. Such reinstatement shall be effective from the date of removal from the register.

Any candidate passed over for appointment for three years shall be automatically stricken from the register.

After having served for a probationary period of one year to the satisfaction of the deputy director for oil and gas and the director, an oil and gas inspector or supervising inspector shall have permanent tenure until he becomes seventy years of age, subject only to dismissal for cause in accordance with the provisions of section one-d of this article. No oil and gas inspector or supervising inspector while in office shall be directly or indirectly interested as owner, lessor, operator, stockholder, superintendent or engineer of any oil and/or gas drilling or producing venture or of any coal mine in this state. Before
entering upon the discharge of his duties as an oil and gas inspector or supervising inspector, he shall take the oath of office prescribed by the constitution, and shall execute a bond in the penalty of two thousand dollars, with security to be approved by the director of the department of mines, conditioned upon the faithful discharge of his duties, a certificate of which oath and bond shall be filed in the office of the secretary of state.

The supervising inspector and oil and gas inspectors shall perform such duties as are imposed upon them by this chapter, and related duties assigned by the deputy director for oil and gas upon approval of the director.

Sec. 1-d. Same; Eligibility for Appointment; Qualifications; Salary; Expenses; Removal.—(a) No person shall be eligible for appointment as an oil and gas inspector or supervising inspector unless, at the time of his probationary appointment he (1) is a citizen of West Virginia, in good health, and of good character, reputation and temperate habits; (2) has had at least ten years’ practical experience in the oil and gas industry, at least five years of which, immediately preceding his original appointment shall have been in the oil and gas industry in this state: Provided, That a diploma in geology or in mining or petroleum engineering from West Virginia University, or any similarly accredited school shall be considered the equivalent of two years’ practical experience; and (3) has good theoretical and practical knowledge of oil and gas drilling and production methods, practices and techniques, sound safety practices and applicable mining laws.

(b) In order to qualify for appointment as an oil and gas inspector or supervising inspector, an eligible applicant shall submit to a written and oral examination by the oil and gas inspectors’ examining board and shall furnish such evidence of good health, character and other facts establishing eligibility as such board may require. If such board finds after investigation and examination that an applicant: (1) Is eligible for appointment and (2) has passed all written and oral examinations, the board shall add such applicant’s name and grade to the register of
qualified eligible candidates and certify its action to the
deputy director for oil and gas. No candidate's name
shall remain on the register for more than three years
without requalifying.

(c) The salary of the supervising inspector shall be
not less than five thousand four hundred dollars per
annum, nor more than eight thousand dollars per annum,
and reasonable traveling expenses. Salaries of inspectors
shall not be less than five thousand four hundred dollars
per annum, nor more than seven thousand dollars per
annum, and reasonable traveling expenses. Within the
limits provided by law, the salary of each inspector and
of the supervising inspector shall be fixed by the deputy
director for oil and gas, subject to the approval of the
director of the department of mines and oil and gas in­
spectors' examining board. In fixing salaries of the oil
and gas inspectors and of the supervising inspector, the
deputy director for oil and gas shall consider ability, per­
formance of duty, and experience. No reimbursement for
traveling expenses shall be made except upon an item­
ized account of such expenses submitted by the inspector
or supervising inspector, as the case may be, who shall
verify, upon oath, that such expenses were actually in­
curred in the discharge of his official duties.

(d) An inspector or the supervising inspector, after
having received a permanent appointment, shall be re­
moved from office only for physical or mental impair­
ment, incompetency, neglect of duty, drunkenness, mal­
feasance in office, or other good cause.

Proceedings for the removal of an oil and gas inspector
or the supervising inspector may be initiated by the
deputy director for oil and gas or the director of the de­
partment of mines whenever either has reasonable
grounds to believe and does believe that adequate cause
exists warranting removal. Such a proceeding shall be
initiated by a verified petition, filed with the oil and gas
inspectors' examining board by the deputy director for
oil and gas or the director, setting forth with particu­
larity the facts alleged. Not less than twenty reputable
citizens engaged in oil and/or gas drilling and produc-
tion operations in the state may petition the deputy director for oil and gas or the director of the department of mines for the removal of an inspector or the supervising inspector. If such petition is verified by at least one of the petitioners, based on actual knowledge of the affiant, and alleges facts which, if true, warrant the removal of the inspector or supervising inspector, the deputy director for oil and gas or the director of the department of mines shall cause an investigation of the facts to be made. If, after such investigation, the deputy director for oil and gas or the director finds that there is substantial evidence which, if true, warrants removal of the inspector or supervising inspector, he shall file a petition with the oil and gas inspectors' examining board requesting removal of the inspector or supervising inspector.

On receipt of a petition by the deputy director for oil and gas or by the director of the department of mines seeking removal of an inspector or the supervising inspector, the oil and gas inspectors' examining board shall promptly notify the inspector or supervising inspector, as the case may be, to appear before it at a time and place designated in said notice, which time shall be not less than fifteen days nor more than thirty days thereafter. There shall be attached to the copy of the notice served upon the inspector or supervising inspector a copy of the petition filed with such board.

At the time and place designated in said notice, the oil and gas inspectors' examining board shall hear all evidence offered in support of the petition and on behalf of the inspector or supervising inspector. Each witness shall be sworn and a transcript shall be made of all evidence taken and proceedings had at any such hearing. No continuance shall be granted except for good cause shown.

The chairman of the board, the deputy director for oil and gas, and the director of the department of mines shall have power to administer oaths and subpoena witnesses.

Any inspector or supervising inspector who shall wilfully refuse or fail to appear before such board, or having appeared, shall refuse to answer under oath any relevant
question on the ground that his testimony or answer might incriminate him, or shall refuse to accept a grant of immunity from prosecution on account of any relevant matter about which he may be asked to testify at such hearing before such board, shall forfeit his position.

If, after hearing, the oil and gas inspectors' examining board finds that the inspector or supervising inspector should be removed, it shall enter an order to that effect. The decision of the board shall be final and shall not be subject to judicial review.

Sec. 1-e. Oil and Gas Inspectors' Examining Board; Creation; Composition; Appointment, Term and Compensation of Members; Chairman; Oaths of Members; Meetings; Powers and Duties Generally.—There is hereby created an oil and gas inspectors' examining board consisting of five members who, except for the public representative on such board, shall be appointed by the governor, by and with the advice and consent of the senate, Members may be removed only for the same causes and like manner as elective state officers. One member of the board, who shall be the representative of the public, shall be the professor in charge of the petroleum engineering department of the school of mines at West Virginia University; two members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of independent oil and gas operators; and two members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of major oil and gas producers.

The deputy director for oil and gas shall be an “ex officio” member of the board, and shall serve as secretary of the board without additional compensation, but he shall have no right to vote with respect to any matter before the board.

The members of the board, except the public representative, shall be appointed for overlapping terms of eight years, except that the original appointments shall be for terms of two, four, six and eight years, respectively. Any member whose term expires may be reappointed by the governor.
Each member of the board shall receive forty dollars per diem while actually engaged in the performance of the work of the board; and shall receive mileage at the rate of ten cents for each mile actually traveled going from the home of the member to the place of the meeting of the board and returning therefrom, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such members of the board.

The public member shall serve as chairman of the board.

Members of the board, before performing any duty shall take and subscribe to the oath required by article four, section five of the constitution of West Virginia.

The board shall meet at such times and places as shall be designated by the chairman. It shall be the duty of the chairman to call a meeting of the board on the written request of two members, or on the written request of the deputy director for oil and gas or the director of the department of mines. Notice of each meeting shall be given in writing to each member by the secretary at least five days in advance of the meeting. Three voting members shall constitute a quorum for the transaction of business.

In addition to other powers and duties expressly set forth elsewhere in this article, the board shall:

1. Establish, and from time to time revise, forms of application for employment as an oil and gas inspector and supervising inspector and forms for written examinations to test the qualifications of candidates, with such distinctions, if any, in the forms for oil and gas inspector and supervising inspector as the board may from time to time deem necessary or advisable;

2. Adopt and promulgate reasonable rules and regulations relating to the examination, qualification and certification of candidates for appointment, and relating to hearings for removal of inspectors or the supervising inspector, required to be held by this article. All of such rules and regulations shall be printed and a copy thereof furnished by the secretary of the board to any person upon request;

3. Conduct, after public notice of the time and place thereof, examinations of candidates for appointment. By
unanimous agreement of all members of the board, one or more members of the board or an employee of the department of mines may be designated to give to a candidate the written portion of the examination;

(4) Prepare and certify to the deputy director for oil and gas and the director of the department of mines a register of qualified eligible candidates for appointment as oil and gas inspectors or as supervising inspectors, with such differentiation, if any, between the certification of candidates for oil and gas inspectors and for supervising inspector as the board may from time to time deem necessary or advisable. The register shall list all qualified eligible candidates in the order of their grades, the candidate with the highest grade appearing at the top of the list. After each meeting of the board held to examine such candidates and at least annually, the board shall prepare and submit to the deputy director for oil and gas and the director of the department of mines a revised and corrected register of qualified eligible candidates for appointment, deleting from such revised register all persons (a) who are no longer residents of West Virginia, (b) who have allowed a calendar year to expire without, in writing, indicating their continued availability for such appointment, (c) who have been passed over for appointment for three years, (d) who have become ineligible for appointment since the board originally certified that such persons were qualified and eligible for appointment, or (e) who, in the judgment of at least three members of the board, should be removed from the register for good cause;

(5) Cause the secretary of the board to keep and preserve the written examination papers, manuscripts, grading sheets and other papers of all applicants for appointment for such period of time as may be established by the board. Specimens of the examinations given, together with the correct solution of each question, shall be preserved permanently by the secretary of the board;

(6) Issue a letter or written notice of qualification to each successful eligible candidate;

(7) Hear and determine proceedings for the removal
of inspectors or the supervising inspector in accordance
with the provisions of this article;

(8) Hear and determine appeals of inspectors or the
supervising inspector from suspension orders made by the
deputy director for oil and gas pursuant to the provisions
of section one-a of this article: Provided, That in order to
appeal from any order of suspension, an aggrieved inspec-
tor or supervising inspector shall file such appeal in writ-
ing with the oil and gas inspectors’ examining board not
later than ten days after receipt of the notice of suspen-
sion. On such appeal the board shall affirm the action of
the deputy director for oil and gas unless it be satisfied
from a clear preponderance of the evidence that the
deputy director for oil and gas has acted arbitrarily;

(9) Make an annual report to the governor concerning
the administration of oil and gas inspection personnel in
the state service; making such recommendations as the
board considers to be in the public interest.

Sec. 1-f. Authority and Duty of Deputy Director and
Inspectors to Visit and Inspect Wells and Facilities; Ins-
spectors to Devote Full Time to Duties.—The deputy di-
rector for oil and gas of the department of mines shall
have authority to visit and inspect any oil and/or gas
well or well site and any other oil and/or gas facility in
this state and may call for the assistance of any oil and gas
inspector or inspectors or supervising inspector whenever
such assistance is necessary in the inspection of any such
oil and/or gas well or well site or any other oil and/or gas
facility. Similarly, all oil and gas inspectors and the su-
ervising inspector shall have authority to visit and in-
spect any oil and/or gas well or well site and any other
oil and/or gas facility in this state. The operator or owner
of every oil and/or gas well or well site or any other oil
and/or gas facility shall cooperate with the deputy di-
rector for oil and gas, all oil and gas inspectors and the
supervising inspector in making inspections or obtaining
information.

Oil and gas inspectors shall devote their full time and
undivided attention to the performance of their duties,
and they shall be responsible for the inspection of all oil
and/or gas wells or well sites or other oil and/or gas fa-
cilities in their respective districts as often as may be re-
quired in the performance of their duties.

Sec. 1-g. Findings and Orders of Inspectors Concerning
Violations; Determination of Reasonable Time for Abate-
ment; Extensions of Time for Abatement; Special Inspec-
tions; Notice of Findings and Orders.—(a) If an oil and
gas inspector, upon making an inspection of an oil and/or
gas well or well site or any other oil and/or gas facility,
as authorized by this article, finds that any provision of
this article is being violated, he shall determine what
would be a reasonable period of time within which such
violation should be totally abated. Such findings shall
contain reference to the provisions of this article which he
finds are being violated, and a detailed description of the
conditions which cause and constitute such violation.

(b) The period of time so found by such oil and gas in-
spector to be a reasonable period of time may be extended
by such inspector, or by any other oil and gas inspector
duly authorized by the deputy director for oil and gas,
from time to time, but on not more than three occasions,
upon the making of a special inspection to ascertain
whether or not such violation has been totally abated. The
deputy director for oil and gas shall cause a special inspec-
tion to be made: (A) Whenever an operator of an oil
and/or gas well or well site or any other oil and/or gas
facility, prior to the expiration of any such period of time,
requests him to cause a special inspection to be made at
such oil and/or gas well or well site or any other oil
and/or gas facility; and (B) upon expiration of such pe-
riod of time as originally fixed or as extended, unless the
deputy director for oil and gas is satisfied that the viola-
tion has been abated. Upon making such special inspec-
tion, such oil and gas inspector shall determine whether or
not such violation has been totally abated. If he deter-
mines that such violation has not been totally abated, he
shall determine whether or not such period of time as
originally fixed, or as so fixed and extended, should be
extended. If he determines that such period of time
should be extended, he shall determine what a reasonable
extension would be. If he determines that such violation
has not been totally abated, and if such period of time as
originally fixed, or as so fixed and extended, has then ex-
pired, and if he also determines that such period of time
should not be further extended, he shall thereupon make
an order requiring the operator of such oil and/or gas well
or well site or other oil and/or gas facility to cease fur-
ther operations of such well, well site or facility, as the
case may be. Such findings and order shall contain refer-
ence to the specific provisions of this article which are
being violated.

(c) Notice of each finding and order made under this
section shall promptly be given to the operator of the oil
and/or gas well or well site or other oil and/or gas fa-
cility to which it pertains, by the person making such
finding or order.

(d) No order shall be issued under the authority of
this section which is not expressly authorized herein.

Sec. 1-h. Review of Findings and Orders by Deputy
Director for Oil and Gas; Special Inspectors; Annulment,
Revision, etc., of Order; Notice.—Any operator of an oil
and/or gas well or well site or other oil and/or gas facility
notified of findings or an order made by an oil and gas in-
spector pursuant to section one-g of this article, may ap-
ply to the deputy director for oil and gas for annulment
or revision of such order. Upon receipt of such applica-
tion the deputy director for oil and gas shall make a
special inspection of the oil and/or gas well, well site or
other oil and/or gas facility affected by such order, or
cause two duly authorized oil and gas inspectors, other
than the oil and gas inspector who made such order or
the supervising inspector and one duly authorized oil and
gas inspector other than the oil and gas inspector who
made such order, to make such inspection of such oil
and/or gas well, or well site or other oil and/or gas
facility and to report thereon to him. Upon making such
special inspection himself, or upon receiving the report
of such special inspection, as the case may be, the deputy
director for oil and gas shall make an order which shall
include his findings and shall annul, revise or affirm the
order of the oil and gas inspector.
The deputy director for oil and gas shall cause notice of each finding and order made under this section to be given promptly to the operator of the oil and/or gas well, well site or other oil and/or gas facility to which such findings and order pertain.

At any time while an order made pursuant to section one-g of this article is in effect, the operator of the oil and/or gas well, well site or other oil and/or gas facility affected by such order may apply to the deputy director for oil and gas for annulment or revision of such order. The deputy director for oil and gas shall thereupon proceed to act upon such application in the manner provided in this section.

In view of the urgent need for prompt decision of matters submitted to the deputy director for oil and gas under this article, all actions which he, or oil and gas inspectors, or the supervising inspector, is required to take under this article, shall be taken as rapidly as practicable, consistent with adequate consideration of the issues involved.

Sec. 1-i. Requirements for Findings, Orders and Notices; Posting of Findings and Orders.—(a) All findings and orders made pursuant to sections one-g or one-h of this article, and all notices required to be given of the making of such findings and orders, shall be in writing. All such findings and orders shall be signed by the person making them, and all such notices shall be signed by the person charged with the duty of giving the notice. All such notices shall contain a copy of the findings and orders referred to therein.

(b) Notice of any finding or order required by sections one-g or one-h of this article to be given to an operator shall be given by causing such notice, addressed to the operator of the oil and/or gas well, well site or other oil and/or gas facility to which such finding or order pertains, to be delivered to such operator by causing a copy thereof to be sent by registered mail to the permanent address of such operator as filed with the department of mines and by causing a copy thereof to be posted upon the drilling rig or other equipment at the oil and/or
gas well, well site or other oil and/or gas facility, as the case may be. The requirement of this article that a notice shall be “addressed to the operator of the oil and/or gas well, well site or other oil and/or gas facility to which such finding or order pertains,” shall not require that the name of the operator for whom it is intended shall be specifically set out in such address. Addressing such notice to “Operator of ______________________,” specifying the oil and/or gas well, well site or other oil and/or gas facility sufficiently to identify it, shall satisfy such requirement.

Sec. 1-j. Judicial Review of Final Orders of the Deputy Director for Oil and Gas.—(a) Any final order issued by the deputy director for oil and gas under section one-h of this article shall be subject to judicial review by the circuit court of the county in which the oil and/or gas well, well site or other oil and/or gas facility affected is located or the circuit court of Kanawha county upon the filing in such court, or with the judge thereof in vacation, of a petition for appeal by the operator aggrieved by such final order, within thirty days from the date of the making of such final order.

(b) The operator making such appeal shall forthwith send a copy of such petition for appeal, by registered mail, to the deputy director for oil and gas. Upon receipt of such copy of such petition for appeal the deputy director for oil and gas shall promptly certify and file in such court a complete transcript of the record upon which the order complained of was made. The costs of such transcriptions shall be paid by the party making the appeal.

(c) The court sitting in lieu of a jury, or judge thereof in vacation, shall, after due notice, conduct a hearing on the issues presented by such appeal and shall permit argument, oral or written or both, by the parties. The court shall permit such pleadings, in addition to the pleadings before the deputy director for oil and gas, as it deems to be required. Evidence relating to the making of the order complained of and relating to the questions raised by the allegations of the pleadings or other ques-
tions pertinent in the proceeding may be offered by the parties to the proceeding.

(d) Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, any circuit court to which an appeal has been made as provided in this section, may, after due notice to and hearing of the parties to the appeal, issue all necessary and appropriate process to postpone the effective date of the final order of the deputy director for oil and gas or to grant such other relief as may be appropriate pending final determination.

(e) A circuit court to which an appeal has been made as provided in this section, may affirm, annul or revise the final order of the deputy director for oil and gas, or it may remand the proceeding to the deputy director for oil and gas for such further action as it directs.

(f) The decision of a circuit court on an appeal from the deputy director for oil and gas shall be final, subject only to review by the supreme court of appeals of West Virginia upon a petition for certiorari filed in such court within sixty days from the entry of the order and decision of the circuit court upon such appeal from the deputy director for oil and gas.

Sec. 2. Plats Prerequisite to Drilling or Fracturing Wells; Preparation and Contents; Notice and Information Furnished to Coal Operators; Issuance of Permits; Performance Bonds or Securities in Lieu Thereof.—Before drilling for oil or gas, or before fracturing an oil and/or gas well originally drilled before the fifth day of June, one thousand nine hundred twenty-nine, on any tract of land, the well operator shall have a plat prepared by a competent engineer showing the district and county in which the tract of land is located, the name and acreage of the same, the names of the owners of adjacent tracts, the proposed or actual location of the well determined by survey, the courses and distances of such location from two permanent points or landmarks on said tract and the number to be given the well (and the date of drilling completion of a well originally drilled before
the fifth day of June, one thousand nine hundred twenty-nine, when it is proposed that such a well be fractured), and shall forward by registered mail a copy of the plat to the department of mines. In the event the tract of land on which the said well proposed to be drilled or fractured is located is known to be underlaid with one or more workable beds of coal, copies of the plat shall be forwarded by registered mail to each and every coal operator, if any, operating said beds of coal beneath said tract of land, or within five hundred feet of the boundaries of the same, who has mapped the same and filed his maps as required by law. With each of such plats there shall be enclosed a notice (form for which shall be furnished on request by the department of mines) addressed to the department of mines and to each such coal operator, if any, at their respective addresses, informing them that such plat and notice are being mailed to them respectively by registered mail, pursuant to the requirements of this article. If no objections are made, or are found by the department, to such proposed location or proposed fracturing within ten days from receipt of such plat and notice by the department of mines, the same shall be filed and become a permanent record of such location or fracturing subject to inspection at any time by any interested person, and the department shall forthwith issue to the well operator a permit reciting the filing of such plat, that no objections have been made by the coal operators, if any, or found thereto by the department, and authorizing the well operator to drill at such location, or to fracture the well originally drilled before the fifth day of June, one thousand nine hundred twenty-nine: Provided, That unless the department has objections to such proposed location or proposed fracturing, such permit shall be issued prior to the expiration of such ten-day period upon the obtaining by the well operator of the consent in writing of the coal operator or operators to whom copies of the plat and notice shall have been mailed as herein required, and upon presentation of such written consent to the department. The notice above provided for may be given to the coal operator by delivering or mailing it as above to any agent or superintendent in actual charge of mines.
A permit to drill, or to fracture an oil and/or gas well originally drilled before the fifth day of June, one thousand nine hundred twenty-nine, shall not be issued unless the application therefor is accompanied by a bond of the operator in the sum of one thousand dollars, payable to the state of West Virginia, with a corporate bonding and/or surety company authorized to do business in this state as surety thereon, conditioned on full compliance with all laws, rules and regulations relating to the drilling, re-drilling, deepening, casing, plugging and abandonment of wells and for furnishing such reports and information as may be required by the department: Provided, however, that when such operator makes or has made application for permits to drill a number of wells and/or fracture a well or wells originally drilled before the fifth day of June, one thousand nine hundred twenty-nine, the operator may in lieu of furnishing a separate bond furnish a blanket bond in the sum of ten thousand dollars, payable to the state of West Virginia, with a corporate bonding and/or surety company authorized to do business in this state as surety thereon, and conditioned as aforesaid: Provided further, that in lieu of corporate surety on a separate or blanket bond, as the case may be, the operator may elect to deposit with the deputy director for oil and gas cash and/or the following collateral securities or any combination thereof: (1) Bonds of the United States or agency thereof, or those guaranteed by, or for which the credit of the United States or agency thereof is pledged for the payment of the principal and interest thereof; (2) direct general obligation bonds of this state, or any other state, or territory of the United States, or the District of Columbia, unconditionally guaranteed as to the principal and interest by such other state or territory of the United States, or the District of Columbia if such other state, territory, or the District of Columbia has the power to levy taxes for the payment of the principal and interest of such securities, and if at the time of the deposit such other state, territory, or the District of Columbia is not in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness; (3) direct general obligation bonds of any county, district, city, town,
99 village, school district or other political subdivision of
this state issued pursuant to law and payable from ad
valorem taxes levied on all the taxable property located
therein, provided that the total indebtedness after de-
ducting sinking funds and all debts incurred for self-sus-
taining public works does not exceed five per cent of the
assessed value of all taxable property therein at the time
of the last assessment made before the date of such de-
posit, and provided that the issuer has not, within five
years prior to the making thereof, been in default for more
than ninety days in the payment of any part of the prin-
cipal or interest on any debt evidenced by its bonds; (4)
revenue bonds issued by this state or any agency of this
state when such bonds are payable from revenues or earn-
ings specifically pledged for the payment of principal and
interest, and a lawful sinking fund or reserve fund has
been established and is being maintained for the payment
of such bonds; (5) revenue bonds issued by a municipality
in this state for the acquisition, construction, improve-
ment, or extension of a waterworks system, or a sewer-
age system, or a combined waterworks and sewerage sys-
tem, when such bonds are payable from revenue or earn-
ings specifically pledged for the payment of principal and
interest, and a lawful sinking fund or reserve fund has
been established and is being maintained for the payment
of such bonds; (6) revenue bonds issued by a public serv-
ice board of a public service district in this state for the
acquisition, construction, improvement or extension of
any public service properties, or for the reimbursement
or payment of the costs and expenses of creating the
district, when such bonds are payable from revenue or
earnings specifically pledged for the payment of principal
and interest, and a lawful sinking fund or reserve fund has
been established and is being maintained for the payment
of such bonds; (7) revenue bonds issued by a board
of trustees of a sanitary district in this state for the cor-
porate purposes of such district, when such bonds are
payable from revenue or earnings specifically pledged
for the payment of principal and interest, and a lawful
sinking fund or reserve fund has been established and is
being maintained for the payment of such bonds; and (8)
bonds issued by a federal land bank or home owners’ loan
corporation. The cash deposit and/or market value of
the collateral securities shall be equal to or greater than
the penalty of the separate or blanket bond, as the case
may be. Upon receipt of any such deposit of cash and/or
collateral securities, the deputy director for oil and gas
shall immediately deliver the same to the treasurer of
the state of West Virginia. The treasurer shall determine
whether any such securities satisfy the requirements of
this section. If the securities are approved they shall be
accepted by the treasurer. If the securities are not ap­
proved, they shall be rejected and returned to the oper­
ator and no permit shall be issued until a corporate surety
bond is filed or cash and/or proper collateral securities are
filed in lieu of such surety. The treasurer shall hold any
cash and/or securities in the name of the state in trust
for the purposes for which the deposit was made. The
operator shall be entitled to all interest and income earned
on the collateral securities filed by such operator so long
as the operator is in full compliance with all laws, rules
and regulations relating to the drilling, redrilling, deep­
ening, casing, plugging and abandonment of wells and for
furnishing such reports and information as may be re­
quired by the department. The operator making the de­
posit shall be entitled from time to time to receive from
the treasurer, upon the written order of the deputy di­
rector for oil and gas, the whole or any portion of such
securities upon depositing with the treasurer in lieu there­
of cash equal to or greater than the penalty of the bond,
and/or other approved securities of the classes herein
specified having a market value equal to or greater than
the penalty of the bond, or a corporate surety bond.

Any such bond shall remain in force until released by
the department and the department shall release the same
when it is satisfied the conditions thereof have been fully
performed. Upon the release of any such bond, any cash
and/or collateral securities deposited shall be returned
by the deputy director for oil and gas to the operator
who deposited same.

Sec. 2-a. Notice to Coal Operators and Department of
Mines of Intention to Fracture Certain Other Wells; Contents of Such Notice; Permit Required.—Before fracturing any oil and/or gas well originally drilled on and after the fifth day of June, one thousand nine hundred twenty-nine, and before the effective date of this act, and which is located on any tract of land known to be underlaid with one or more workable beds of coal, the well operator shall, by registered mail, forward a notice of intention to fracture such well to the department of mines and to each and every coal operator operating said beds of coal beneath said tract of land, or within five hundred feet of the boundaries of the same, who has mapped the same and filed his maps as required by law: Provided, That nothing contained in this article shall under any circumstances be construed to require any well operator to give a notice of intention to fracture, or to obtain a permit to fracture, a well drilled on and after the effective date of this act. The notice shall be addressed to the department of mines and to each such coal operator at their respective addresses, shall contain the number of the drilling permit for such well and/or such other information as may be required by the department to enable the department and the coal operators to locate and identify such well and shall inform them that such notice is being mailed to them respectively by registered mail, pursuant to the requirements of this article. (The form for such notice of intention shall be furnished on request by the department of mines.) If no objections are made, or are found by the department, to such proposed fracturing within ten days from receipt of such notice by the department of mines, the same shall be filed and become a permanent record of such fracturing, subject to inspection at any time by any interested person, and the department shall forthwith issue to the well operator a permit reciting the filing of such notice, that no objections have been made by the coal operators, or found thereto by the department, and authorizing the well operator to fracture such well: Provided, however, That unless the department has objections to such proposed fracturing, such permit shall be issued prior to the expiration of such ten-day period upon the obtaining by
the well operator of the consent in writing of the coal
operator or operators to whom notice of intention to frac-
ture shall have been mailed as herein required, and upon
presentation of such written consent to the department.
The notice above provided for may be given to the coal
operator by delivering or mailing it as above to any agent
or superintendent in actual charge of mines.

Sec. 3. Objections to Proposed Drilling or Fracturing;
Notices and Hearings; Agreed Location or Conditions;
Location or Conditions Fixed by Department of Mines;
Indication of Changes on Plats, etc.; Issuance of Permits;
Docket of Proceedings.—In any case where the pro-
posed drilling or fracturing site is above or in close
proximity to any mine opening or shaft, entry, travel-
ning, air, haulage, drainage or other passageway, or to any
proposed extension thereof, in any operated or aban-
donied or operating coal mine, or coal mine already sur-
veyed and platted, but not yet being operated, so that
the well or the pillar of coal about the well necessary
to the protection of the mine and of the well itself when
drilled or fractured will interfere with or endanger the
use of such mine opening, entries or ways, then the coal
operator or operators affected may, and shall, if the
drilling or fracturing of a well at such location will cause
a dangerous condition in their mine or mines, within
ten days from the receipt by the department of mines
of the plat and notice required by section two, or within
ten days from receipt by the department of mines of the
notice required by section two-a, file objections in writing
(forms for which will be furnished by the department
on request) to such proposed drilling or fracturing with
the department of mines, setting out therein as definitely
as is reasonably possible the ground or grounds on which
such objections are based and in the case of proposed
drilling, indicating the direction and distance from the
location shown the proposed well should be drilled to
overcome such objections, and in the case of proposed
fracturing, indicating the conditions for the protection of
life and property under which the well should be frac-
tured to overcome such objections.

If any objection or objections are so filed by any coal
operator or are made by the department of mines, the de-
partment shall notify the well operator of the character
of the objections and by whom made and fix a time and
place, not less than ten days from the end of said ten-day
period, at which such objections will be considered, of
which time and place the well operator and all coal oper-
ators to whom a copy of the plat and notice required by
section two was mailed, or to whom the notice required
by section two-a was mailed, as the case may be, whether
objecting or not objecting to the proposed drilling or
fracturing, shall be given at least five days' written notice
by the department, by registered mail, and summoned
to appear, bringing with them their maps and plans show-
ing their mines and mine workings and in the case of pro-
posed drilling, being prepared to approve or to except to
such location or locations as the department may, after
hearing, approve or itself fix in case no agreement is
reached, and in the case of proposed fracturing being pre-
pared to approve or to except to any conditions under
which the fracturing is to take place as the department
may, for the protection of life and property, after hearing,
approve or itself fix in case no agreement is reached. At
the time and place so fixed the well operator and the in-
terested coal operators, or such of them as are present or
represented, shall proceed to consider the objections, and
in the case of proposed drilling to agree upon either the
location as made or so moved as to satisfy all objections
and meet the approval of the department, and any change
in the original location so agreed upon and approved by
the department shall be indicated on said plat on file with
the department, and the distance and direction of the new
location from the original location shall be shown, and,
as so altered, the plat shall be filed and become a perma-
nent record, and in the case of proposed fracturing to
agree upon conditions under which the well is to be frac-
tured which will protect life and property and which will
satisfy all objections and meet the approval of the de-
partment, at which time the plat and notice required by
section two, or the notice required by section two-a, as
the case may be, shall be filed and become a permanent
record. Whereupon the department shall forthwith issue
to the well operator a drilling or fracturing permit, as the case may be, reciting the filing of the plat and notice required by said section two, or the notice required by said section two-a, as the case may be, that at a hearing duly held a location as shown on the plat or the conditions under which the fracturing is to take place for the protection of life and property were agreed upon and approved, and that the well operator is authorized to drill at such location or to fracture at the site shown on such plat, or to fracture the well identified in the notice required by section two-a, as the case may be.

In case the well operator and the coal operator or such of the coal operators as are present or represented at such hearing are unable to agree upon a drilling location, or upon a drilling location that meets the approval of the department of mines, then the department shall fix a drilling location on such tract of land as near to the original location as possible in a pillar of suitable size, through which the well can be drilled safely, taking into consideration the dangers from creep, squeeze, or other disturbance, due to the extraction of coal. Should no such pillar exist, however, the well may be located and drilled through open workings where, in the judgment of the department of mines, it is practicable and safe so to do, taking into consideration the dangers from creeps, squeezes, or other disturbances. In case the well operator and the coal operator or such of the coal operators as are present or represented at such hearing are unable to agree upon the conditions under which the well is to be fractured so as to protect life and property, or upon conditions of fracturing that meet the approval of the department of mines, then the department shall fix the conditions under which the well is to be fractured, provided the well can be fractured safely, taking into consideration the dangers from creeps, squeezes, or other disturbances. Such new drilling location shall be indicated on the plat on file with the department as provided in the next preceding paragraph of this section, and the department shall forthwith tender to the well operator a permit to drill at such location, or to fracture at the site shown on plat, or to fracture the well identified in the notice re-
quired by section two-a, as the case may be, which permit
the well operator may accept or refuse to accept, and if
it accepts such permit, the coal operator or operators hav-
ing filed objections and appearing or being represented at
such hearing, may except to such location or fracturing
and to the issuance of such drilling or fracturing permit;
and the well operator accepting the same may require the
record of the hearing to show that it accepts such drilling
permit at the location made by the department as a new
or additional location and not in lieu of its original loca-
tion, or that it accepts such fracturing permit as to the
conditions under which the well is to be fractured as
fixed by the department as new conditions and not in lieu
of the conditions preferred by it, and that it reserves the
right to appeal to the circuit court of the county in which
its original drilling location, or its fracturing site, lies for
relief, and that it excepts to the refusal of the department
to approve such original location substantially as made
or to approve the conditions of fracturing preferred.

The department of mines shall number and keep an
index of and docket each plat and notice mailed to it as
provided in section two of this article, and each notice
mailed to it as provided in section two-a of this article,
entering in such docket the name of the well operator,
names of the coal operators notified and their addresses,
the date of receipt of any such plat and notice required
by said section two or notice required by said section
two-a and of all objections filed, dates of hearings and all
actions taken by the department, permits issued or re-
fused, which docket shall be open to inspection by the
public, and, together with the papers filed, shall consti-
tute the record of each such proceeding before the de-
partment.

Sec. 4. Appeal by Coal Operator or Well Operator from
Drilling Location Fixed or Approved, or from the Condi-
tions of Fracturing Fixed or Approved, by Department
of Mines or from Issuance of Permit to Drill or Fracture;
Procedure.—Any coal operator excepting to any drilling
location fixed or approved by the department of mines or
to the issuance of any drilling permit, or to the conditions
under which the well is to be fractured as fixed or ap-
proved by the department of mines for the protection of life and property or to the issuance of any fracturing permit, and any well operator excepting to the refusal of the department to grant a drilling permit at the location shown in the plat mailed to the department as provided in section two of this article, or such location so shifted as to be still substantially the same or the equivalent thereof, or to the refusal of the department to grant a fracturing permit in accordance with the conditions of fracturing preferred by the well operator, may at any time within ten days of the taking of such action by the department of mines appeal to the circuit court of the county in which the proposed drilling location or fracturing site involved lies. The procedure shall be by petition and answer, duly verified, and naming the department as one of the respondents. The petition shall briefly set forth the matter in controversy, the ruling of the department and the relief sought. The operator making such appeal shall forthwith send a copy of such petition for appeal, by registered mail, to the deputy director for oil and gas. Upon receipt of such copy of such petition for appeal the deputy director for oil and gas shall promptly certify and file in such court a complete transcript of the record upon which the ruling complained of was made, as well as copies of all papers filed with the department. The costs of such transcriptions shall be paid by the party making the appeal. The respondents shall be required to answer under oath within ten days after service of copies of the petition upon them, and the procedure shall be expedited, as far as is reasonably possible, having regard to possible drainage or loss of title by the well operator through its failure to complete or fracture a well within the period fixed by the terms of the lease under which it holds. The court may, by preliminary order, upon proper proof of the necessity therefor and the giving of proper security, stay the drilling or fracturing of any well until a final decision on the appeal, and after a final hearing, at which any competent and relevant evidence may be introduced, may set aside any action or order of the department and enter such final order and decree as in its judgment is just and right and will best
carry out the provisions of this article. From such final
orders and decrees of the circuit court an appeal may be
taken to the supreme court of appeals. During vacation
periods or when for any reason the circuit court is not in
session, such proceedings shall be before the judge of such
court in vacation, or, in his absence, before the judge of
an adjoining circuit, who may act until the return of the
regular judge to his circuit, whereupon all further pro-
ceedings shall be had before the regular judge or circuit
court having initial jurisdiction therein, and all proceed-
ings in vacation shall be of like force and effect as if be-
fore the court in session.

Sec. 9. Plugging and Abandonment of Well; Notice of
Intention; Performance Bond or Securities in Lieu There-
of; Affidavit Showing Time and Manner.—Prior to the
abandonment of any well, the well operator shall notify,
by registered mail, the department of mines and the coal
operator or operators, if any, to whom notices are required
to be given by section two of this article and the coal oper-
ator or operators to whom notices are required to be given
by section two-a of this article of its intention to plug and
abandon any such well (using such form of notice as the
department may provide), giving the number of the well
and its location and fixing the time at which the work of
plugging and filling will be commenced, which time shall
be not less than five days after the day on which such
notice so mailed is received or in due course should be
received by the department of mines, in order that a
representative or representatives of the department and
the coal operator or operators, if any, or of both, may be
present at the plugging and filling of the well. Whether
such representatives appear or do not appear, the well
operator may proceed at the time fixed to plug and fill
the well in the manner hereinafter described. Notwith-
standing the foregoing, a well operator may proceed to
plug and fill a well at any time without giving the afore-
said notice of intention if such operator has first obtained
in writing the approval of the department of mines and
the coal operator or operators, if any, to whom notices
are required to be given by section two of this article
and the coal operator or operators to whom notices are
required to be given by section two-a of this article. No well shall be plugged or abandoned unless the department is furnished a bond of the operator in the sum of one thousand dollars, payable to the state of West Virginia, with a corporate bonding and/or surety company authorized to do business in this state as surety thereon, conditioned on full compliance with all laws, rules and regulations relating to the casing, plugging and abandonment of wells and for furnishing such reports and information as may be required by the department: *Provided,* That when a number of wells are involved, the operator may in lieu of furnishing a separate bond furnish a blanket bond in the sum of ten thousand dollars, payable to the state of West Virginia, with a corporate bonding and/or surety company authorized to do business in this state as surety thereon, and conditioned as aforesaid: *Provided, however,* That in lieu of corporate surety on a separate or blanket bond, as the case may be, the operator may elect to deposit with the deputy director for oil and gas cash and/or collateral securities as specified in section two of this article. All of the provisions of section two dealing with cash and/or collateral securities in lieu of corporate surety shall be fully applicable hereto except for the condition of the bond with respect to which the operator must be in full compliance in order to be entitled to the interest and income earned on such securities. The operator shall be entitled to such interest and income under this section so long as the operator is in full compliance with all laws, rules and regulations relating to the casing, plugging and abandonment of wells and for furnishing such reports and information as may be required by the department. Any such bond shall remain in force until released by the department and the department shall release the same when it is satisfied the conditions thereof have been fully performed. Notwithstanding the foregoing provisions, any operator who, in accordance with section two of this article, has furnished a separate bond, which has not been released by the department, for the drilling or fracturing of the well it is now proposed be plugged and abandoned, or who, in accordance with the provisions of said section two of this
article, has furnished a blanket bond which has not been released by the department shall not be required by this section to furnish any other bond. When the plugging and filling of a well have been completed, an affidavit, in triplicate, shall be made (on a form to be furnished by the department) by two experienced men who participated in the work, in which affidavit shall be set forth the time and manner in which the well was plugged and filled. One copy of this affidavit shall be retained by the well operator, another (or true copies of same) shall be mailed to the coal operator or operators, if any, and the third to the department of mines.

Sec. 14. Preventing Waste of Gas; Plans of Operation Required for Wasting Gas in Process of Producing Oil; Rejection Thereof.—Natural gas shall not be permitted to waste or escape from any well or pipe line, when it is reasonably possible to prevent such waste, after the owner or operator of such gas, or well, or pipe line, has had a reasonable length of time to shut in such gas in the well, or make the necessary repairs to such well or pipe line to prevent such waste: Provided, That (a) if, in the process of drilling a well for oil or gas, or both, gas is found in such well, and the owner or operator thereof desires to continue to search for oil or gas, or both, by drilling deeper in search of lower oil or gas-bearing strata, or (b) if it becomes necessary to make repairs to any well producing gas, commonly known as “cleaning out,” and if in either event it is necessary for the gas in such well to escape therefrom during the process of drilling or making repairs, as the case may be, then the owner or operator of such well shall prosecute such drilling or repairs with reasonable diligence, so that the waste of gas from the well shall not continue longer than reasonably necessary, and if, during the progress of such deeper drilling or repairs, any temporary suspension thereof becomes necessary, the owner or operator of such well shall use all reasonable means to shut in the gas and prevent its waste during such temporary suspension: Provided, however, That in all cases where both oil and gas are found and produced from the same oil and gas-bearing stratum, and where it is necessary for the gas therefrom to waste in the process of producing the oil,
the owner or operator shall use all reasonable diligence
to conserve and save from waste so much of such gas as it
to conserve and save from waste so much of such gas as it
is reasonably possible to save, but in no case shall
such gas from any well be wasted in the process of pro-
ducing oil therefrom until the owner or operator of such
well shall have filed with the department a plan of opera-
tion for said well showing, among other things, the gas-
oil production ratio involved in such operation, which
plan shall govern the operation of said well unless the
department shall, within ten days from the date on which
such plan is submitted to the department, make a finding
that such plan fails, under all the facts and circumstances,
to propose the exercise of all reasonable diligence to con-
serve and save from waste so much of such gas as it is
reasonably possible to save, in which event production of
oil at such well by the wasting of gas shall cease and
determine until a plan of operation is approved by the
department. Successive plans of operation may be filed
by the owner or operator of any such well with the de-
partment.

Sec. 18. Injunctive Relief.—In addition to all other
remedies, and aside from various penalties provided by
law, if any person, firm or corporation is violating or
threatening to violate any provision of this article, or any
lawful rule or regulation promulgated thereunder, the
department may maintain a civil action in the circuit
court of the county wherein such violation has occurred
or is threatened, or wherein such person, firm or corpo-
rathon may be found, to enjoin, restrain or prevent such
actual or threatened violation. No injunction bond shall
be required to be filed in any such proceeding.

*CHAPTER 96
(Com. Sub. for Senate Bill No. 14—Originating in the Senate
Committee on Roads and Navigation)

[Passed March 9, 1963; in effect from passage. Approved by the Governor.]

AN ACT to repeal article one, chapter seventeen-a of the code

*See note to Chapter 97.
of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article one; and to amend and reenact section fifteen, article three of said chapter seventeen-a; relating to the definitions of certain words and phrases used in said chapter seventeen-a concerning motor vehicle administration, registration, certificate of title and antitheft provisions, and relating to the display of vehicle registration plates.

Be it enacted by the Legislature of West Virginia:

That article one, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and a new article one be enacted in lieu thereof; and section fifteen, article three of said chapter seventeen-a be amended and reenacted, all to read as follows:

Article
1. Words and Phrases Defined.
3. Original and Renewal of Registration; Issuance of Certificates of Title.


Section
1. Definitions.

Section 1. Definitions.—The following words and phrases when used in this chapter shall for the purpose of this chapter have the meanings respectively ascribed to them in this article:

(a) Vehicle. Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) Motor Vehicle. Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(c) Motorcycle. Every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground but excluding a tractor.

(d) School Bus. Every motor vehicle owned by a public governmental agency and operated for the transporta-
tion of children to or from school or privately owned and
operated for compensation for the transportation of chil-
dren to or from school.

(e) Bus. Every motor vehicle designed for carrying
more than seven passengers and used for the transporta-
tion of persons; and every motor vehicle, other than a
taxicab, designed and used for the transportation of per-
sons for compensation.

(f) Truck Tractor. Every motor vehicle designed and
used primarily for drawing other vehicles and not so con-
structed as to carry a load other than a part of the weight
of the vehicle and load so drawn.

(g) Farm Tractor. Every motor vehicle designed and
used primarily as a farm implement for drawing plows,
mowing machines, and other implements of husbandry.

(h) Road Tractor. Every motor vehicle designed and
used for drawing other vehicles and not so constructed as
to carry any load thereon either independently or any
part of the weight of a vehicle or load so drawn.

(i) Truck. Every motor vehicle designed, used, or
maintained primarily for the transportation of property.

(j) Trailer. Every vehicle with or without motive
power designed for carrying persons or property and for
being drawn by a motor vehicle and so constructed that
no part of its weight rests upon the towing vehicle.

(k) Semitrailer. Every vehicle with or without motive
power designed for carrying persons or property and for
being drawn by a motor vehicle and so constructed that
some part of its weight and that of its load rests upon or
is carried by another vehicle.

(l) Pole Trailer. Every vehicle without motive power
designed to be drawn by another vehicle and attached to
the towing vehicle by means of a reach, or pole, or by
being boomed or otherwise secured to the towing vehicle,
and ordinarily used for transporting long or irregularly
shaped loads such as poles, pipes, or structural members
capable, generally, of sustaining themselves as beams be-
tween the supporting connections.

(m) Specially Constructed Vehicles. Every vehicle of
a type required to be registered hereunder not originally
constructed under a distinctive name, make, model, or
type by a generally recognized manufacturer of vehicles
and not materially altered from its original construction.

(n) **Reconstructed Vehicle.** Every vehicle of a type
required to be registered hereunder materially altered
from its original construction by the removal, addition,
or substitution of essential parts, new or used.

(o) **Essential Parts.** All integral and body parts of a
vehicle of a type required to be registered hereunder, the
removal, alteration, or substitution of which would tend
to conceal the identity of the vehicle or substantially alter
its appearance, model, type, or mode of operation.

(p) **Foreign Vehicles.** Every vehicle of a type required
to be registered hereunder brought into this state from
another state, territory, or country other than in the ordi-
nary course of business by or through a manufacturer or
dealer and not registered in this state.

(q) **Implement of Husbandry.** Every vehicle which is
designed for agricultural purposes and used by the owner
thereof primarily in the conduct of his agricultural oper-
ations.

(r) **Special Mobile Equipment.** Every vehicle not de-
dsigned or used for the transportation of persons or prop-
erty and incidentally operated or moved over the high-
ways, including road construction or maintenance ma-
achinery, ditch-digging apparatus, well-boring apparatus,
concrete mixers, and farm tractors, when farm tractors
cannot be classified as an implement of husbandry as de-
fin ed in subparagraph (q) of this section. The foregoing
enumeration shall be deemed partial and shall not operate
to exclude other such vehicles which are within the gen-
eral terms of this subparagraph.

(s) **Pneumatic Tire.** Every tire in which compressed
air is designed to support the load.

(t) **Solid Tire.** Every tire of rubber or other resilient
material which does not depend upon compressed air for
the support of the load.

(u) **Metal Tire.** Every tire the surface of which in
97 contact with the highway is wholly or partly of metal
98 or other hard, nonresilient material.
99  (v) **Commissioner.** The commissioner of motor ve-
100 hicles of this state.
101  (w) **Department.** The department of motor vehicles of
102 this state acting directly or through its duly authorized
103 officers and agents.
104  (x) **Person.** Every natural person, firm, copartnership,
105 association, or corporation.
106  (y) **Owner.** A person who holds the legal title of a ve-
107 hicle or in the event a vehicle is the subject of an agree-
108 ment for the conditional sale or lease thereof with the
109 right of purchase upon performance of the conditions
110 stated in the agreement and with an immediate right
111 of possession vested in the conditional vendee or lessee,
112 or in the event a mortgagor of a vehicle is entitled to
113 possession, then such conditional vendee or lessee or
114 mortgagor shall be deemed the owner for the purpose of
115 this chapter.
116  (z) **Nonresident.** Every person who is not a resident
117 of this state.
118  (aa) **Resident.** Every person who is a legal resident of
119 this state and every nonresident (owner, corporation,
120 manufacturer, dealer, used car dealer) owning, maintain-
121 ing or operating a place or places of business in this state
122 and using motor vehicles intrastate in connection with
123 such business in this state, or any nonresident who main-
124 tains temporary residence in this state and accepts any
125 employment or engages in any trade, profession or occup-
126 ation in this state, or any nonresident who maintains
127 temporary residence in this state in excess of thirty days
128 during the registration year.
129  (bb) **Dealer.** Every person primarily engaged in the
130 business of buying, selling, or exchanging vehicles of a
131 type required to be registered hereunder and who has an
132 established place of business for such purpose in this state
133 which meets the requirements set out in sections one and
134 two, article seven of this chapter, except an insurance
135 company, a finance company or other type of lending or
136 financing agency, including banking institutions, or any
other person coming into possession of a vehicle as an incident to such person's regular business who shall sell such vehicle, or who shall sell such vehicle under any contractual rights such persons may have with respect thereto, shall not be a dealer hereunder: Provided, That a person who engages exclusively in the wrecking or dismantling of vehicles for junk or for resale of the parts of such vehicles and who comes into possession of a vehicle for the purpose of wrecking or dismantling same as hereabove stated shall not be a dealer hereunder.

(cc) Transporter. Every person engaged in the business of delivering vehicles of a type required to be registered hereunder from a manufacturing, assembling, or distributing plant to dealers or sales agents of a manufacturer.

(dd) Manufacturer. Every person engaged in the business of constructing or assembling vehicles of a type required to be registered hereunder at an established place of business in this state.

(ee) Established Place of Business. The place actually occupied either continuously or at regular periods by a dealer or manufacturer where his books and records are kept and a large share of his business is transacted.

(ff) Street or Highway. The entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

Article 3. Original and Renewal of Registration; Issuance of Certificates of Title.

Section
15. Display of registration plates.

Section 15. Display of Registration Plates.—Registration plates issued for vehicles required to be registered hereunder shall be attached to the rear thereof.

Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so as to prevent the plate from swinging and at a height of not less than twelve inches from the ground,
AN ACT to amend and reenact section nineteen, article one, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special mobile equipment.

Be it enacted by the Legislature of West Virginia:

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


Section 19. Special Mobile Equipment.—Every vehicle not designed or used for the transportation of persons or property and incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, well-boring apparatus, concrete mixers, and farm tractors, when farm tractors cannot be classified as an implement of husbandry as defined in section eighteen, article one of this chapter.

The foregoing enumeration shall be deemed partial and shall not operate to exclude other such vehicles which

* This bill, amending Sec. 19, Art. 1, Chapter 17-a, was passed March 7, 1963. Chapter 96 of these Acts (S. B. 14) was passed March 9, 1963. It will be noted that Chapter 96 repeals Art. 1, Chapter 17-a of the Code consisting of sections 1 through 32, and enacts a new Art. 1, consisting of one section. The portion of the article amended by Chapter 96 is embraced in the new article one.
are within the general terms of this section: Provided, however, That any motor vehicle operated more than once each week on said highways shall be considered more than incidental operation and shall not constitute a piece of special mobile equipment as herein defined.

CHAPTER 98

(House Bill No. 384—By Mr. White and Mr. Watson)

[Passed March 9, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article two, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the records of the department of motor vehicles.

Be it enacted by the Legislature of West Virginia:

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

Article 2. Department of Motor Vehicles.

Section 14. Records of department.

Section 14. Records of Department.—(a) All records of the department, other than those declared by law to be confidential for the use of the department, shall be open to public inspection during office hours.

(b) The commissioner may destroy any records of the department which have been maintained on file for three years which he may deem obsolete and of no further service in carrying out the powers and duties of the department: Provided, That where it is shown that both parties to an accident have filed valid evidence of insurance, the records relating thereto may be destroyed after a period of six months.
AN ACT to amend and reenact section sixteen, article two, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authority of department of motor vehicles to seize documents and plates.

Be it enacted by the Legislature of West Virginia:

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

Article 2. Department of Motor Vehicles.

Section 16. Cancellation, suspension, seizure, etc., of documents and plates. — The department is hereby authorized to take possession of any certificate of title, registration card, permit, license, or registration plate issued by it upon expiration, revocation, cancellation, or suspension thereof, or which is fictitious, or which has been unlawfully or erroneously issued.

When the department determines that the required fee for the issuance by the department of any registration card, permit, license or registration plate, or the required tax imposed by section four of article three of this chapter, has not been paid and shall not be paid upon reasonable notice and demand, the commissioner is authorized and empowered to cancel or suspend or revoke, as he shall deem appropriate, any and all registration cards, permits, operator’s and chauffeur’s licenses, and registration plate or plates, issued to the person, firm or corporation by whom or on whose account any such fee or tax shall have been so determined to remain unpaid after such reasonable notice and demand.
AN ACT to amend and reenact section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to applications for certificates of titles to motor vehicles and a tax upon the privilege of effecting the certification of title of each vehicle.

Be it enacted by the Legislature of West Virginia:

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

Article 3. Original and Renewal of Registration, Issuance of Certificates of Title.

Section 4. Application for Certificate of Title; Tax.
signed and sworn to by the applicant. A tax is hereby imposed upon the privilege of effecting the certification of title of each vehicle in the amount equal to three per cent of the value of said motor vehicle at the time of such certification. If the vehicle is new, the actual purchase price or consideration to the purchaser thereof shall be the value of said vehicle; if the vehicle is a used or second-hand vehicle, the present market value at time of transfer or purchase shall be deemed the value thereof for the purpose of this section: Provided, That if said motor vehicle is purchased in the state of West Virginia, so much of the purchase price or consideration as is represented by the exchange of other vehicles on which the tax herein imposed has been paid by the purchaser shall be deducted from the total actual price or consideration paid for said vehicle, whether the same be new or second-hand; if the vehicle be acquired through gift, or by any manner whatsoever, unless specifically exempted in this section, the present market value of the vehicle at the time of the gift or transfer shall be deemed the value thereof for purposes of this section. No certificate of title for any vehicle shall be issued to any applicant unless such applicant shall have paid to the department of motor vehicles the tax imposed by this section which shall be three per cent of the true and actual value of said vehicle whether the vehicle be acquired through purchase, by gift, or by any other manner whatsoever except gifts between husband and wife or between parents and children; but the tax imposed by this section shall not apply to vehicles to be registered as Class H vehicles, as defined in section one, article ten of this chapter, which are used or to be used in interstate commerce, nor shall the tax imposed by this section apply to titling of vehicles by a registered dealer of this state for resale only, nor shall the tax imposed by this section apply to titling of vehicles by this state or any political subdivision thereof, or by any volunteer fire department organized and incorporated under the laws of the state of West Virginia for protection of life or property. The total amount of revenue collected by reason of this tax shall be paid into the state road fund and expended by the state road commissioner for matching fed-
eral aid funds allocated for West Virginia. In addition to
said tax, there shall be a charge of one dollar for each
original certificate of title so issued: Provided, however,
That this state or any political subdivision thereof, or any
such volunteer fire department, shall be exempted from
payment of such charge.

Notwithstanding the provisions of this section, the own-
ers of trailers, semitrailers and other vehicles not subject
to the certificate of title tax prior to enactment of this
chapter shall not be required to pay the above-mentioned
tax upon making application for a certificate of title for
such vehicle, but shall be required to pay a fee of one
dollar for the issuance of each such certificate of title.

Such certificate shall be good for the life of the vehicle,
so long as the same is owned or held by the original hold-
er of such certificate, and need not be renewed annually,
or any other time, except as herein provided.

If, by will or direct inheritance, a person becomes the
owner of a motor vehicle upon which the tax herein im-
posed has been paid, he shall not be required to pay such
tax.

A person who has paid the tax imposed by this section
shall not be required to pay the tax a second time for the
same motor vehicle, but he shall be required to pay a
charge of one dollar for the certificate of retitle of that
motor vehicle, except that such tax shall be paid by such
person when the title to such vehicle has been transferred
either in this or another state from such person to another
person and transferred back to such person.

CHAPTER 101
(Senate Bill No. 204—By Mr. Carson, Mr. President,
and Mr. Smith)

[Passed March 4, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article three,
chapter seventeen-a of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to registration plates to be furnished by the department of motor vehicles.

Be it enacted by the Legislature of West Virginia:

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

Article 3. Original and Renewal of Registration, Issuance of Certificates of Title.

Section 14. Registration plates to be furnished by the department; special registration plates; permanent registration plates.

Section 14. Registration Plates to Be Furnished by the Department; Special Registration Plates; Permanent Registration Plates.—The department upon registering a vehicle shall issue to the owner one registration plate for a motorcycle, trailer, semitrailer or other motor vehicle.

Every registration plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, also the name of this state, which may be abbreviated, and the year number for which it is issued or the date of expiration thereof.

Such registration plate and the required letters and numerals thereon, except the year number for which issued or the date of expiration, shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight, said registration numbering to begin with number two.

The color of the registration plates shall be blue and gold of reflectorized material. Colors shall be reversed each year.

The department shall not issue, permit to be issued, or distribute any special numbers except as follows:

(a) The governor shall be issued registration plates, on one of which shall be imprinted the numeral one and on the other the word one.

(b) Upon appropriate application, there shall be issued to the secretary of state, state superintendent of free schools, auditor, treasurer, commissioner of agriculture,
and the attorney general, the members of both houses of
the Legislature, including the clerks thereof, the judges of
the supreme court of appeals of West Virginia, the rep-
resentatives and senators of the state in the Congress of
the United States, the judges of the United States district
courts for the state of West Virginia and the judges of
the United States court of appeals for the fourth circuit,
if any of said judges shall be residents of West Virginia,
a special registration plate for a motor vehicle owned by
him or his wife, but not to exceed one plate for each such
official, which plate shall bear the initials of the individ-
ual, or any combination of letters not to exceed three,
which combination of letters shall be limited to a con-
traction of the proper name or names of such individual
or a familiar form applicable to such names or a name
by which the individual is generally known, and shall
not include any name that might be construed as a slogan
or advertisement which has no relation to the name or
names of such individual or to a reasonable name by
which he is generally known, together with a designation
of his office and which plate shall supersede, during his
term of office and while such motor vehicle is owned by
him or his wife, the regular numbered plate assigned to
him.

(c) Upon appropriate application, any owner of a motor
vehicle subject to registration under the provisions of this
article may request that the department issue to said
owner a registration plate bearing a particular number.
The department shall attempt to comply with such re-
quest wherever possible.

(d) In addition to the regular registration fees set forth
in section three, article ten of this chapter, a fee of five
dollars shall be paid to the department in each case in
which an application for a special registration plate is
made as hereinabove provided in subparagraphs (b)
and (c).

Notwithstanding the provisions of this section, or of any
other provision of this chapter, the commissioner may,
in his discretion, issue a type of registration plate suitable
for permanent use on motor vehicles, trailers and semi-
trailers, together with appropriate devices to be attached thereto to indicate the year for which such vehicles have been properly registered or the date of expiration of such registration. The design of such plates shall be determined by the commissioner.

CHAPTER 102

(Senate Bill No. 206—Mr. Carson, Mr. President, and Mr. Smith)

[Passed March 4, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to registration plates on state-owned vehicles.

Be it enacted by the Legislature of West Virginia:

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

Article 3. Original and Renewal of Registration, Issuance of Certificates of Title.

Section 23. Registration plates for state, county, municipal and other governmental vehicles.

Section 23. Registration Plates for State, County, Municipal and Other Governmental Vehicles.—Any motor vehicle designed to carry passengers, owned or leased by the state of West Virginia, or any of its departments, bureaus, commissions or institutions, except vehicles used by the governor, vehicles operated by the department of public safety and not to exceed four vehicles operated by the arson investigators of the office of state fire marshal, shall not be operated or driven by any person unless it shall have displayed and attached to the front thereof, in the same manner as regular motor vehicle registration plates are attached, a plate of the same size as the regular regis-
A registration plate, with white lettering on a green background bearing the words “West Virginia” in one line and the words “State Car” in another line, and the lettering for the words “State Car” shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight.

Such vehicle shall also have attached to the rear a plate bearing a number and said other words and figures as the commissioner of motor vehicles shall prescribe. The rear plate shall also be green with the number in white.

On registration plates issued to vehicles owned by counties, the color shall be white on red with the word “County” on top of the plate and the words “West Virginia” on the bottom. On any registration plates issued to a city or municipality, the color shall be white on blue with the word “City” on top, and the words “West Virginia” on the bottom. The colors may not be reversed and shall be of reflectorized material. The commissioner is hereby authorized to designate the colors and design of any other registration plates that are issued without charge to any other agency in accordance with the motor vehicle laws. The registration plates issued to counties, municipalities and other governmental agencies authorized to receive colored plates hereunder shall be affixed to both the front and rear of such vehicles.

No other registration plate shall be issued for, or attached to, any such state-owned vehicle.

The commissioner of motor vehicles shall have a sufficient number of both front and rear plates produced to attach to all state-owned cars. The numbered registration plates for such vehicles shall start with the number “five hundred” and the commissioner shall issue consecutive numbers for all state-owned cars.

It shall be the duty of each office, department, bureau, commission or institution furnished any such vehicle to have such plates affixed thereto prior to the operation of such vehicle by any official or employee.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars or more than one hundred dollars.
AN ACT to amend article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding a new section thereto, designated section twelve, providing for obtaining title to abandoned motor vehicles.

Be it enacted by the Legislature of West Virginia:

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

Article 4. Transfers of Title or Interest.

Section 12. Transfer of Abandoned Motor Vehicle.—

The department, upon receipt of an application for a title accompanied by a properly executed affidavit averring that a motor vehicle has been abandoned by the owner and stored by the applicant for a period of ninety days or more, the name of the owner of the motor vehicle, if known, and that the value of said motor vehicle on the date of the application is less than one hundred dollars, shall issue a certificate of title for said motor vehicle to the applicant for the usual fee: Provided, however, That notice of the filing of such application shall be given by the department to the registered owner of such motor vehicle, if known, and to the lienholders appearing on the certificate of registra-
tion, if any, by certified mail, at least fifteen days prior 
to the issuance of a certificate of title to the applicant.
In the event a motor vehicle of said value is abandoned 
for a period of ninety days or more on public property 
or on a public street, the governing body of the area in 
which said street or property is located may obtain a 
certificate of title for said motor vehicle by the method 
outlined above.

CHAPTER 104

(Senate Bill No. 341—By Mr. Martin)

[Passed March 8, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article five, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exemption from registration vehicles owned by nonresidents who accept or engage in temporary and recurrent or seasonal employment, business, profession or occupation in this state and maintain temporary and recurrent or seasonal residence in this state in connection with such employment, business, profession or occupation, and authorizing the issuance of special permits for such vehicles in lieu of registration.

Be it enacted by the Legislature of West Virginia:

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

Article 5. Permits to Nonresident Owners.

Section

1. Exemptions from registration of nonresident owners; special permit and certificate in lieu of registration for nonresidents maintaining temporary and recurrent or seasonal residence in state.

Section 1. Exemptions from Registration of Nonresident Owners; Special Permit and Certificate in Lieu of Registration for Nonresidents Maintaining Temporary and Re-
current or Seasonal Residence in State.—(a) A nonresident owner, except as otherwise provided in this section, owning any vehicle registered in a foreign state or country of a type otherwise subject to registration hereunder may operate or permit the operation of such vehicle within this state for a period of thirty days without registering such vehicle in, or paying any fees to, this state subject to the condition that such vehicle at all times when operated in this state is duly registered in and displays upon it a valid registration card and registration plate or plates issued for such vehicle in the place of residence of such owner.

(b) Every nonresident, including any foreign corporation, carrying on business within this state and owning and regularly operating in such business any motor vehicle, trailer, or semitrailer within this state, shall be required to register each such vehicle and pay the same fee therefor as is required with reference to like vehicles owned by residents of this state, except as otherwise provided by reciprocal agreements with other states accomplished pursuant to section ten, article two of this chapter.

(c) Any nonresident who accepts or engages in temporary and recurrent or seasonal employment, business, profession or occupation in this state and maintains temporary and recurrent or seasonal residence in this state in connection with such employment, business, profession, or occupation, and any nonresident, including any corporation carrying on business of a temporary and recurrent or seasonal nature in this state and owning and temporarily and recurrently or seasonally operating in such business any motor vehicle, trailer or semitrailer within this state, may operate or permit the operation of such vehicle within this state without causing said vehicle to be registered as otherwise required by article three of this chapter: Provided, That such nonresident, in lieu of registration of such vehicle, shall make application to the department and receive a special permit for such vehicle which shall be evidenced by a metal identification plate and certificate in writing, which special permit plate and certificate shall together identify the vehicle for which such special permit and plate shall issue and such certificate shall bear the name and address of the owner.
of such vehicle. Such special permit shall be issued without previous certification of title to such vehicle as otherwise required by article three of this chapter.

Every owner of a vehicle for which such special permit is desired shall make a verified application to the department for such special permit upon the appropriate form or forms furnished by the department and shall bear the signature of the owner written with pen and ink and shall contain the character of information called for by section three, article three of this chapter, a description of the employment, residence, business and location of such business set forth in such manner as to show the temporary and recurrent or seasonal nature of such residence, employment, business, profession or occupation, and that such vehicle is duly registered in the state of residence of such owner. There shall be an application for each vehicle for which a special permit is desired.

Any special permit or plate issued by the department under this section shall be effective and valid for a period of sixty consecutive days from and including the date of issuance and, upon similar application by the owner, the commissioner may renew any such special permit for immediately ensuing similar period or periods of sixty days in any fiscal year. The department shall charge a fee of ten dollars for each special permit issued under this section. A special permit shall be issued for one vehicle only and no combination of two or more vehicles shall be operated under fewer special permits than the number of vehicles in such combination. A special permit shall not be issued for any vehicle which is not duly registered in the state of residence of the owner thereof. The registration plate issued for such vehicle by the state of residence of the owner shall not be displayed on such vehicle while being operated over any highway during any period for which a special permit shall have been issued for such vehicle under this section, but there shall be carried in such vehicle the certificate of registration issued for such vehicle by the state of residence of such owner.

The commissioner shall prescribe the substance, form, color and context of the certificate or special permit and the special permit plate, each of which shall be visually
It is a misdemeanor for any person to drive or move or knowingly to permit to be moved or driven upon any highway any vehicle for which a special permit shall have been issued under this section unless such vehicle shall bear the special plate called for by the certificate evidencing such special permit.

When the employment, business, profession, occupation or residence of the owner of a vehicle for which such special permit shall have been issued shall cease to be temporary and recurrent or seasonal, any special permit issued for such vehicle pursuant to this section shall immediately terminate and become void and such vehicle shall thereupon become subject to registration under article three of this chapter.

Any special permit issued pursuant to this section shall be valid and effective on and after the first day of a month; that is, such special permit issued between the first and fifteenth days of a month shall be effective during sixty consecutive days from and including the first day of the month in which the permit shall issue; and a special permit issued after the fifteenth day of any month shall be effective during sixty consecutive days commencing with and including the first day of the month next following the month in which such special permit shall be issued.

CHAPTER 105

(House Bill No. 221—By Mr. Myles and Mr. Anderson)

[Passed March 9, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eight, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections,
designated sections nine and ten, all relating to unlawfully obtaining or retaining possession of a motor vehicle with intent to defraud the owner or possessor thereof; to unlawfully retaining possession of a rented or leased motor vehicle after failure to return said vehicle as agreed and after failure to return same within seventy-two hours following a written or oral demand therefor; and providing penalties.

Be it enacted by the Legislature of West Virginia:

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

Article 8. Special Antitheft Laws.

Section 9. Unlawfully obtaining possession of a rented or leased vehicle; penalty.
Section 10. Unlawful retention of rented or leased vehicle after notice; penalty.

Section 9. Unlawfully Obtaining Possession of a Rented or Leased Vehicle; Penalty.—Any person who in renting or leasing a motor vehicle obtains possession or retains possession of the same by means of any false or fraudulent representation, fraudulent concealment, false pretense or personation, trick, artifice or device, including, but not limited to, a false representation as to his name, residence, employment, or operator's license, shall be guilty of a misdemeanor, and, upon conviction, may be confined in jail for a period of not more than one year or be fined not more than five hundred dollars or both.

Sec. 10. Unlawful Retention of Rented or Leased Vehicle After Notice; Penalty.—Any person who, after renting or leasing a motor vehicle under an agreement in writing which provides for the return of said vehicle to a particular place at a particular time, shall fail to return the vehicle to said place within the time specified, and is thereafter served with a written notice, or upon whom oral demand is thereafter personally made, to return said vehicle to the place specified in the written agreement within seventy-two hours from the time of the service of notice or personal communication of such demand, and who fails to return said vehicle to the lessor within said
period, shall be guilty of a misdemeanor, and, upon con-

viction, may be confined in jail for a period of not more
than one year or be fined not more than five hundred
dollars or both. The notice hereinabove provided for
may be served in the same manner that any other notice
may now be served under existing statutes.

CHAPTER 106

(Senate Bill No. 200—By Mr. Carson, Mr. President,
and Mr. Smith)

[Passed March 6, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article ten, chapter
seventeen-a of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to classifi-
cation of vehicles for purposes of registration.

Be it enacted by the Legislature of West Virginia:

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

Article 10. Registration, License and Other Fees.

Section 1. Classification of Vehicles for Purpose of
Registration.—Vehicles subject to registration under the
provisions of this chapter shall be placed in the following
classes for the purpose of registration:

Class A. Motor vehicles of passenger type, other than
those operated for compensation;

Class B. Motor vehicles designated as trucks, truck trac-
tors, or road tractors other than those operated for com-

pensation;

Class C. All trailers and semitrailers, except those op-
erated for compensation, and except house trailers and
trailers or semitrailers designed to be drawn by Class A
motor vehicles and having a gross weight of less than two thousand pounds;

Class E. Motor vehicles designated as trucks, truck tractors, or road tractors operated for transportation of property for compensation, but being exempt from the operating jurisdiction of the public service commission, and for which a statement of exemption has been received from the public service commission;

Class G. Motorcycles;

Class H. Motor vehicles operated regularly for the transportation of persons for compensation under a certificate of convenience and necessity or contract carrier permit issued by the public service commission;

Class J. Motor vehicles operated for transportation of persons for compensation by common carriers, not running over a regular route or between fixed termini;

Class K. Motor vehicles designated as trucks, truck tractors, or road tractors operated for transportation of property for compensation under a certificate of convenience and necessity or a contract carrier permit issued by the public service commission;

Class L. All trailers and semitrailers used for transportation of property for compensation;

Class R. House trailers;

Class S. Special mobile equipment as defined in subdivision (r), section nineteen, article one of this chapter;

Class T. Trailers or semitrailers of a type designed to be drawn by Class A vehicles and having a gross weight of less than two thousand pounds.

Class U. Passenger motor vehicles rented for compensation without a driver.

Class Farm Truck. Motor vehicles designated as trucks having a minimum gross weight of more than eight thousand pounds and a maximum gross weight of twenty-two thousand pounds, used exclusively in the conduct of a farming business, engaged in the production of agricultural products by means of (a) the planting, cultivation and harvesting of agricultural, horticultural, vegetable
or other products of the soil, (b) the raising, feeding and
care of livestock, poultry, bees, and dairy cattle. Such
farm truck shall be used only for the transportation of
agricultural products so produced by the owner thereof,
or for the transportation of agricultural supplies used in
such production, or for private passenger use.

CHAPTER 107

(Senate Bill No. 202—By Mr. Carson, Mr. President,
and Mr. Smith)

[Passed March 8, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article ten, chap­
ter seventeen-a of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to regis­
tration fees for vehicles equipped with pneumatic tires.

Be it enacted by the Legislature of West Virginia:

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

Article 10. Registration, License and Other Fees.

Section 3. Registration fees for vehicles equipped with pneumatic tires.

Section 3. Registration Fees for Vehicles Equipped with
Pneumatic Tires.—The following registration fees for the
classes indicated shall be paid annually to the department
for the registration of vehicles subject to registration here­
under when equipped with pneumatic tires:

Class A. The registration fee for all motor vehicles of
this class shall be as follows:

(1) For motor vehicles of a weight of three thousand
pounds or less—twenty dollars.

(2) For motor vehicles of a weight of three thousand
and one pounds to four thousand pounds—twenty-four
dollars.
(3) For motor vehicles of a weight in excess of four thousand pounds—thirty dollars.

For the purpose of determining the weight the actual weight of the vehicle shall be taken: Provided, That for vehicles owned by churches, or by trustees for churches, which vehicles are regularly used for transporting parishioners to and from church services, no license fee shall be charged, but notwithstanding such exemption; the certificate of registration and license plates shall be obtained the same as other cards and plates under this article.

Class B, Class E and Class K. The registration fee for all motor vehicles of these three classes shall be as follows:

(1) For declared gross weights of four thousand pounds or less—twenty dollars.

(2) For declared gross weights of four thousand and one pounds to eight thousand pounds—twenty-two dollars and fifty cents.

(3) For declared gross weights of eight thousand and one pounds to sixteen thousand pounds—twenty-two dollars and fifty cents plus forty-five cents for each hundred pounds or fraction thereof that gross weight of such vehicle or combination of vehicles exceeds eight thousand pounds.

(4) For declared gross weights greater than sixteen thousand pounds—sixty-eight dollars and fifty cents plus ninety cents for each one hundred pounds or fraction thereof that the gross weight of such vehicle or combination of vehicles exceeds sixteen thousand pounds.

If the declared gross weight of a Class B, Class E or Class K motor vehicle includes the gross weight of a Class C or Class L vehicle used in combination with such Class B, Class E or Class K motor vehicle and the declared gross weight of the vehicles constituting such combination exceeds sixteen thousand pounds and the registration fee prescribed hereunder for such Class C or Class L vehicle has been paid, there shall be deducted from the registration fee for such Class B, Class E or Class K motor vehicle the amount of seventeen dollars and fifty cents; but, there shall be no such deduction where the declared gross weight
of the vehicles constituting such combination is less than sixteen thousand and one pounds.

Class C and Class L. The registration fee for all vehicles of these two classes shall be seventeen dollars and fifty cents.

Class G. The registration fee for each motorcycle having two wheels shall be six dollars. The registration fee for each motorcycle having three wheels shall be seven dollars and fifty cents.

Class H. The registration fee for all vehicles for this class operating entirely within the state shall be five dollars; and for vehicles engaged in interstate transportation of persons, the registration fee shall be the fees provided by this section for Class B, Class E and Class K reduced by the amount that the mileage of such vehicles operated in states other than West Virginia bears to the total mileage operated by such vehicles in all states under a formula to be established by the department of motor vehicles.

Class J. The registration fee for all motor vehicles of this class shall be eighty-five dollars. Ambulances and hearses used exclusively as such shall be exempted from the above special fees.

Class R. The registration fee for all vehicles of this class shall be ten dollars.

Class S. The registration fee for all vehicles of this class shall be seventeen dollars and fifty cents.

Class T. The registration fee for all vehicles of this class shall be six dollars.

Class U. The registration fee for all vehicles of this class shall be fifty-seven dollars and fifty cents.

Class Farm Truck. The registration fee for all motor vehicles of this class shall be as follows: (1) For farm trucks of declared gross weights of eight thousand and one pounds to sixteen thousand pounds—thirty dollars; and (2) for farm trucks of declared gross weights of sixteen thousand and one pounds to twenty-two thousand pounds—eighty dollars.
AN ACT to amend and reenact section five, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the requirement that the public service commission assessment of a vehicle to be operated for compensation must be paid before such vehicle may be registered; to the suspension of registration cards and registration plates issued to motor carriers; and, to the privilege of exchanging for such suspended registration cards and plates, registration cards and plates for vehicles of a different class.

Be it enacted by the Legislature of West Virginia:

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

Article 10. Registration, License and Other Fees.

Section 5. Public service commission assessment must be paid before vehicle registered; suspension of registration cards and plates issued to motor carriers; privilege to exchange suspended registration cards and plates.

Section 5. Public Service Commission Assessment Must Be Paid before Vehicle Registered; Suspension of Registration Cards and Plates Issued to Motor Carriers; Privilege to Exchange Suspended Registration Cards and Plates.—The commissioner shall not register any Class H, Class J, Class K or Class L vehicle unless the assessment for such vehicle provided for in section six, article six, chapter twenty-four-a of this code shall have been paid and notice of such payment shall have been received by the commissioner in the manner provided by said section. The commissioner shall suspend any registration card and registration plate issued by the department under
authority of this section for any Class H, Class J, Class K or Class L vehicle upon receiving certification in writing from the public service commission that said commission has cancelled, suspended or revoked the certificate of convenience and necessity, permit or other operating authority of the motor carrier to whom or to which such registration card and registration plate were issued under the authority provided by the first paragraph of this section:

Provided, That the motor carrier to whom or to which said registration card and registration plate were issued shall have the privilege of receiving in exchange for any such suspended registration card and registration plate a registration card and registration plate for a vehicle of a different class as provided by section one of article four of this chapter.

CHAPTER 109

(Com. Sub. for Senate Bill No. 16—Originating in the Senate Committee on the Judiciary)

[Passed March 9, 1963; in effect from passage. Approved by the Governor.]

AN ACT to repeal article one, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article one, relating to motor vehicle operators' and chauffeurs' licenses and the definitions of certain words and phrases used in said chapter seventeen-b.

Be it enacted by the Legislature of West Virginia:

That article one, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and a new article one be enacted in lieu thereof to read as follows:


Section

1. Definitions.

Section 1. Definitions.—The following words and phrases when used in this chapter shall, for the purpose
of this chapter, have the meanings respectively ascribed
to them in this article:

(a) Vehicle. Every device in, upon, or by which any
person or property is or may be transported or drawn upon
a public highway, excepting devices moved by human
power or used exclusively upon stationary rails or tracks;

(b) Motor Vehicle. Every vehicle which is self-pro-
pelled and every vehicle which is propelled by electric
power obtained from overhead trolley wires, but not
operated upon rails;

(c) Farm Tractor. Every motor vehicle designed and
used primarily as a farm implement for drawing plows,
mowing machines, and other implements of husbandry;

(d) School Bus. Every motor vehicle owned by a public
governmental agency and operated for the transportation
of children to or from school or privately owned and
operated for compensation for the transportation of chil-
dren to or from school;

(e) Person. Every natural person, firm, copartnership,
association, or corporation;

(f) Operator. Every person, other than a chauffeur,
who drives or is in actual physical control of a motor
vehicle upon a highway or who is exercising control over
or steering a vehicle being towed by a motor vehicle;

(g) Chauffeur. Every person who is employed by
another for the principal purpose of driving a motor
vehicle and every person who drives a school bus trans-
porting school children or any motor vehicle when in use
for the transportation of persons or property for com-
pensation;

(h) Owner. A person who holds the legal title of a
vehicle or in the event a vehicle is the subject of an agree-
ment for the conditional sale or lease thereof with the
right of purchase upon performance of the conditions
stated in the agreement and with an immediate right of
possession vested in the conditional vendee or lessee, or
in the event a mortgagor of a vehicle is entitled to pos-
session, then such conditional vendee or lessee or mort-
gagor shall be deemed the owner for the purpose of this
chapter;
(i) **Nonresident.** Every person who is not a resident of this state;

(j) **Street or Highway.** The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel;

(k) **Commissioner.** The commissioner of motor vehicles of this state;

(l) **Department.** The department of motor vehicles of this state acting directly or through its duly authorized officers or agents;

(m) **Suspension.** Suspension means that the driver’s license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn but only during the period of such suspension;

(n) **Revocation.** Revocation means that the driver’s license and privilege to drive a motor vehicle on the public highways are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted upon by the department after the expiration of at least one year after the date of revocation, except as otherwise provided in section two, article five, chapter seventeen-c of this code;

(o) **Cancellation.** Cancellation means that a driver’s license is annulled and terminated because of some error or defect or because the licensee is no longer entitled to such license, but the cancellation of a license is without prejudice and application for a new license may be made at any time after such cancellation.

**CHAPTER 110**

(House Bill No. 392—By Mr. White and Mr. Watson)

[Passed March 9, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two, chap-

*S. B. 342 (Chapter 111 of these Acts) also amended the same section of the Code as H. B. 392, which is this chapter. It will be noted that H. B. 392 was passed last.*
ter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exemption of persons from the licensing provisions of the motor vehicles law.

Be it enacted by the Legislature of West Virginia:

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

Article 2. Issuance of License, Expiration and Renewal.

Section 2. What persons are exempt from license.

Section 2. What Persons Are Exempt from License.—

The following persons are exempt from license hereunder:

1. Any person while operating a motor vehicle in the
   service of the army, air force, navy, or marine corps of
   the United States;

2. A nonresident who is at least sixteen years of age
   and who has in his immediate possession a valid oper-
   ator's license issued to him in his home state or country
   may operate a motor vehicle in this state only as an oper-
   ator for a period not to exceed ninety days in any one cal-
   endar year;

3. A nonresident who is at least eighteen years of
   age and who has in his immediate possession a valid
   chauffeur's license issued to him in his home state or
   country may operate a motor vehicle in this state either
   as an operator or chauffeur subject to the age limits ap-
   plicable to chauffeurs in this state except that any such
   person must be licensed as a chauffeur hereunder before
   accepting employment as chauffeur from a resident of
   this state or from a person or persons having a place of
   business in this state;

4. Any person who is a student, properly enrolled
   and registered in an accredited school, college or uni-
   versity in this state and who is legally licensed to operate
   a motor vehicle in his residence state: Provided, That the
   state of which he is a resident shall extend the same
   privileges to residents of this state. This exemption shall
   be cancelled immediately when such student is graduated.
AN ACT to amend and reenact section two, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exemption of classes of persons from licensing as chauffeurs and operators of vehicles.

Be it enacted by the Legislature of West Virginia:

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

**Article 2. Issuance of License, Expiration and Renewal.**

**Section 2. What Persons Are Exempt from License.—**

2 The following persons are exempt from license hereunder:

4 (1) Any person while operating a motor vehicle in the service of the army, air force, navy, or marine corps of the United States;

7 (2) A nonresident who is at least sixteen years of age and who has in his immediate possession a valid operator's license issued to him in his home state or country may operate a motor vehicle in this state only as an operator for a period not to exceed ninety days in any one calendar year;

13 (3) A nonresident who is at least eighteen years of age and who has in his immediate possession a valid
15 chauffeur's license issued to him in his home state or
16 country may operate a motor vehicle in this state either
17 as an operator or chauffeur subject to the age limits
18 applicable to chauffeurs in this state except that any
19 such person must be licensed as a chauffeur hereunder
20 before accepting employment as chauffeur from a resi-
21 dent of this state or from a person or persons having a
22 place of business in this state;
23 (4) A nonresident who is at least sixteen years of age
24 and who has in his immediate possession a valid operator's
25 license issued to him in his home state or country, may
26 operate in this state a motor vehicle for which a special
27 permit shall have been issued pursuant to subsection (c) of
28 section one, article five, chapter seventeen-a of this code:
29 Provided, That such person is the owner of such vehicle
30 or shall operate such vehicle with the consent of such
31 owner and shall have also in his immediate possession
32 the certificate of registration issued to the owner of such
33 vehicle by the state of residence of such owner and also
34 the certificate of special permit issued by the department
35 to the owner for such vehicle pursuant to said subsection
36 (c) of section one, article five, chapter seventeen-a of
37 said code;
38 (5) A nonresident who is at least eighteen years of
39 age and who has in his immediate possession a valid
40 chauffeur's license issued to him in his home state or coun-
41 try may operate in this state a motor vehicle for which a
42 special permit shall have been issued pursuant to sub-
43 section (c) of section one, article five, chapter seventeen-a of this code: Provided, however, That such person
44 shall be employed by the owner of such vehicle to operate
45 such vehicle and shall have also in his immediate posses-
46 sion the certificate of registration issued to such owner
47 for such vehicle by the state of residence of such owner
48 and also the certificate of special permit issued by the
49 department to the owner of said vehicle pursuant to sub-
50 section (c) of section one, article five of said chapter
51 seventeen-a.
CHAPTER 112

(Senate Bill No. 199—By Mr. Carson, Mr. President, and Mr. Smith)

[Passed March 6, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authority of the department of motor vehicles to cancel any operator's or chauffeur's license.

Be it enacted by the Legislature of West Virginia:

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

Article 3. Cancellation, Suspension or Revocation of Licenses.

Section 1. Authority of Department to Cancel License.

The department is hereby authorized to cancel any operator's or chauffeur's license in any of the following events:

1. When the department determines that the licensee was not entitled to the issuance thereof hereunder; or,
2. When said licensee failed to give the required or correct information in his application; or,
3. When said licensee committed any fraud in making such application; or,
4. When the department determines that the required fee has not been paid and the same is not paid upon reasonable notice or demand.

Upon such cancellation the licensee must surrender the license so cancelled to the department.
AN ACT to amend and reenact section three, article four, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to driving upon the highways of the state when one's license has been suspended or revoked, and providing penalties.

Be it enacted by the Legislature of West Virginia:

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


Section 3. Driving while license suspended or revoked.

Section 3. Driving While License Suspended or Revoked.—Any person who drives a motor vehicle on any public highway of this state at a time when his privilege so to do has been lawfully suspended or revoked shall, for the first offense, be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail for a period of forty-eight hours and, in addition to such mandatory jail sentence, shall be fined not less than fifty dollars nor more than five hundred dollars; for the second offense, such person shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail for a period of ten days and, in addition to such mandatory jail sentence, shall be fined not less than one hundred dollars nor more than five hundred dollars; for the third or any subsequent offense, such person shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail for a period of six months and, in addition to such mandatory jail sentence, shall be fined not less than one thousand dollars nor more than five thousand dollars.
sentence, shall be fined not less than one hundred fifty dollars nor more than five hundred dollars.

The department upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the license of such person was suspended lawfully shall extend the period of such suspension for an additional like period and if the conviction was upon a charge of driving while a license was revoked lawfully the department shall not issue a new license for an additional period of one year from and after the date such person would otherwise have been entitled to apply for a new license.

CHAPTER 114

(Com. Sub. for Senate Bill No. 11—Originating in the Senate Committee on Roads and Navigation)

AN ACT to repeal article one and to enact in lieu thereof a new article one; to amend and reenact section eight, article two; to amend article three by adding thereto a new section, designated section four-a; to amend and reenact section eight of article three; to amend and reenact sections one and two, article six; to amend article ten by adding thereto a new section, designated section eight; to amend and reenact section three, article thirteen; and to amend article thirteen by adding thereto a new section, designated section five, all of chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the regulation of the operation, stopping, standing and parking of motor and other vehicles and imposing penalties.

Be it enacted by the Legislature of West Virginia:

That article one be repealed and a new article one enacted in lieu thereof; that section eight, article two be amended and reenacted; that article three be amended by adding thereto a
new section, designated section four-a; that section eight, ar-
icle three be amended and reenacted; that sections one and
two, article six, be amended and reenacted; that article ten
be amended by adding thereto a new section, designated sec-
tion eight; that section three, article thirteen, be amended and
reenacted; and that article thirteen be amended by adding
thereto a new section, designated section five, all of chapter
seventeen-c of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, all to read as follows:

Article

1. Words and Phrases Defined.
2. Obedience to and Effect of Traffic Laws.
3. Traffic Signs, Signals and Markings.
6. Speed Restrictions.


Section

1. Definition of words and phrases.
2. Vehicle.
3. Motor vehicle.
4. Motorcycle.
5. Motor-driven cycle.
6. Authorized emergency vehicle.
7. School bus.
8. Bicycle.
9. Truck tractor.
10. Farm tractor.
11. Road tractor.
12. Truck.
14. Trackless trolley coach.
15. Trailer.
17. Pole trailer.
18. Pneumatic tire.
19. Solid tire.
20. Metal tire.
22. Railroad train.
23. Streetcar.
24. Explosives.
25. Flammable liquid.
27. Commissioner.
29. Person.
30. Pedestrian.
31. Driver.
32. Owner.
33. Police officer.
34. Local authorities.
35. Street or highway.
36. Private road or driveway.
37. Roadway.
38. Sidewalk.
39. Laned roadway.
40. Through highway.
41. Controlled-access highway.
42. Intersection.
43. Cross walk.
44. Safety zone.
45. Business district.
46. Residence district.
47. Traffic-control devices.
49. Railroad sign or signal.
50. Traffic.
51. Right-of-way.
52. Stop.
53. Stop, stopping, or standing.
54. Park.
55. School grounds.

Section 1. Definition of Words and Phrases.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this article.

Sec. 2. Vehicle.—“Vehicle” means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

Sec. 3. Motor Vehicle.—“Motor vehicle” means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

Sec. 4. Motorcycle.—“Motorcycle” means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

Sec. 5. Motor-Driven Cycle.—“Motor-driven cycle” means every motorcycle, including every motor scooter, with a motor which produces not to exceed five horsepower, and every bicycle with motor attached.

Sec. 6. Authorized Emergency Vehicle.—“Authorized emergency vehicle” means vehicles of the fire department, police vehicles, and such ambulances and emergency vehicles of municipal departments or public serv-
ice corporations as are designated or authorized by the commissioner or the chief of police of an incorporated city, and such privately owned ambulances and emergency vehicles as are designated by the commissioner.

Sec. 7. School Bus.—“School bus” means every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

Sec. 8. Bicycle.—“Bicycle” means every device propelled by human power upon which any person may ride, having two tandem wheels either of which is more than twenty inches in diameter.

Sec. 9. Truck Tractor.—“Truck tractor” means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

Sec. 10. Farm Tractor.—“Farm tractor” means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

Sec. 11. Road Tractor.—“Road tractor” means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

Sec. 12. Truck.—“Truck” means every motor vehicle designed, used or maintained primarily for the transportation of property.

Sec. 13. Bus.—“Bus” means every motor vehicle designed for carrying more than seven passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

Sec. 14. Trackless Trolley Coach.—“Trackless trolley coach” means every motor vehicle which is propelled by
electric power obtained from overhead trolley wires but not operated upon rails.

Sec. 15. Trailer.—“Trailer” means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

Sec. 16. Semitrailer.—“Semitrailer” means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

Sec. 17. Pole Trailer.—“Pole trailer” means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

Sec. 18. Pneumatic Tire.—“Pneumatic tire” means every tire in which compressed air is designed to support the load.

Sec. 19. Solid Tire.—“Solid tire” means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

Sec. 20. Metal Tire.—“Metal tire” means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard nonresilient material.

Sec. 21. Railroad.—“Railroad” means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

Sec. 22. Railroad Train.—“Railroad train” means a steam engine, electric or other motor, with or without
Sec. 23. Streetcar.—“Streetcar” means a car other than a railroad train for transporting persons or property and operated upon rails principally within a municipality.

Sec. 24. Explosives.—“Explosives” means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosive and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

Sec. 25. Flammable Liquid.—“Flammable liquid” means any liquid which has a flash point of seventy degrees Fahrenheit, or less, as determined by a tagliabue or equivalent closed-cup test device.

Sec. 26. Gross Weight.—“Gross weight” means the weight of a vehicle without load plus the weight of any load thereon.

Sec. 27. Commissioner.—“Commissioner” means the commissioner of motor vehicles of this state.

Sec. 28. Department.—“Department” means the department of motor vehicles of this state acting directly or through its duly authorized officers and agents.

Sec. 29. Person.—“Person” means every natural person, firm, copartnership, association, or corporation.

Sec. 30. Pedestrian.—“Pedestrian” means any person afoot.

Sec. 31. Driver.—“Driver” means every person who drives or is in actual physical control of a vehicle.

Sec. 32. Owner.—“Owner” means a person who holds the legal title of a vehicle or in the event a vehicle is the
subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

Sec. 33. Police Officer.—“Police officer” means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

Sec. 34. Local Authorities.—“Local authorities” means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

Sec. 35. Street or Highway.—“Street” or “highway” means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

Sec. 36. Private Road or Driveway.—“Private road” or “driveway” means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

Sec. 37. Roadway.—“Roadway” means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term “roadway” as used herein shall refer to any such roadway separately but not to all such roadways collectively.

Sec. 38. Sidewalk.—“Sidewalk” means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

Sec. 39. Laned Roadway.—“Laned roadway” means a
roadway which is divided into two or more clearly marked lanes for vehicular traffic.

Sec. 40. Through Highway.—“Through highway” means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this chapter.

Sec. 41. Controlled-Access Highway.—“Controlled-access highway” means every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway.

Sec. 42. Intersection.—“Intersection” includes: (a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict; and (b) Where a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

Sec. 43. Cross Walk.—“Cross walk” includes: (a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; and (b) Any portion of a roadway at an intersection or
Sec. 44. Safety Zone.—"Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

Sec. 45. Business District.—"Business district" means the territory contiguous to and including a highway when within any six hundred feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations, and public buildings which occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.

Sec. 46. Residence District.—"Residence district" means the territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.

Sec. 47. Traffic-Control Devices.—"Traffic-control devices" means all signs, signals, markings, and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

Sec. 48. Traffic-Control Signal.—"Traffic-control signal" means any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

Sec. 49. Railroad Sign or Signal.—"Railroad sign" or "signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

Sec. 50. Traffic.—"Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other convey-
ances either singly or together while using any highway for purposes of travel.

Sec. 51. Right-of-Way.—“Right-of-way” means the privilege of the immediate use of the highway.

Sec. 52. Stop.—“Stop”, when required, means complete cessation from movement.

Sec. 53. Stop, Stopping, or Standing.—“Stop”, “stopping”, or “standing”, when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal.

Sec. 54. Park.—“Park”, when prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

Sec. 55. School Grounds.—“School grounds” includes the land on which a school is built together with such other land used by students for play, recreation or athletic events while attending school.

Article 2. Obedience to and Effect of Traffic Laws.

Section 8. Powers of local authorities.

(a) The provisions of this chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

1. Regulating the standing or parking of vehicles;
2. Regulating traffic by means of police officers or traffic-control devices;
3. Regulating or prohibiting processions or assemblies on the highways;
4. Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;
5. Regulating the speed of vehicles in public parks;
(6) Designating any highway as a through highway and requiring that all vehicles stop before entering or crossing the same or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances at such intersection;

(7) Restricting the use of highways as authorized in section twelve, article seventeen of this chapter;

(8) Regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee;

(9) Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;

(10) Altering the speed limits as authorized herein;

(11) Adopting such other traffic regulations as are specifically authorized by this chapter.

(b) No local authority shall permit any parking on any state highway, or erect or maintain any stop sign or traffic-control device at any location so as to require the traffic on any state highway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the state road commissioner. Any such approval may be withdrawn by a notice in writing from the state road commissioner.

(c) No ordinance or regulation enacted under subdivisions (4), (5), (6), (7), or (10), of subsection (a) of this section shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrance to the highway or part thereof affected as may be most appropriate.

Article 3. Traffic Signs, Signals and Markings.

Section 4-a. Obedience to traffic-control instructions at site of street or highway construction or maintenance.

8. Display of unauthorized devices, signals, signs, or markings.

Section 4-a. Obedience to Traffic-Control Instructions at Site of Street or Highway Construction or Maintenance.—The driver of any vehicle shall obey the traffic-control instructions of persons authorized by the state road commissioner or by proper local authorities to operate traffic-control devices, act as flagmen, or operate follow-vehicles
at or near the site of street or highway construction or maintenance work, for the purpose of regulating, warning or guiding traffic, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter. Any person failing to comply with the requirements of this section shall be guilty of a misdemeanor.

Sec. 8. Display of Unauthorized Devices, Signals, Signs, or Markings.—(a) No local authority or person shall place, maintain, or display upon or in view of any highway any unauthorized traffic-control device or traffic-control signal, or any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal, and no person shall place or maintain nor shall any public authority permit upon any highway any traffic-control device bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(b) Every such prohibited device, signal, sign or marking is hereby declared to be a public nuisance and the state road commissioner or other authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice.

Article 6. Speed Restrictions.

Section

1. Special restrictions.
2. Establishment of state speed zones.

Section 1. Special Restrictions.—(a) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards, then existing. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highways in com-
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8 pliance with legal requirements and the duty of all per-
9 sons to use due care.

10 (b) Where no special hazard exists that requires lower
11 speed for compliance with subsection (a) of this section
12 the speed of any vehicle not in excess of the limits speci-
13 fied in this section or established as hereinafter authorized
14 shall be lawful, but any speed in excess of the limits speci-
15 fied in this section or established as hereinafter author-
16 ized shall be unlawful.

17 (1) Fifteen miles per hour when passing a school
18 building or school grounds abutting on a road, street or
19 highway during school recess or while children are going
20 to or leaving school during opening or closing hours. Such
21 speed restriction shall not apply to vehicles traveling on a
22 controlled-access highway which is separated from the
23 school or school grounds by a fence or barrier approved
24 by the state road commissioner;

25 (2) Twenty-five miles per hour in any business or resi-
26 dence district;

27 (3) Fifty-five miles per hour on open country high-
28 ways, except as otherwise provided by this chapter.

29 The speeds set forth in this section may be altered as
30 authorized in sections two and three of this article.

31 (c) The driver of every vehicle shall, consistent with
32 the requirements of subsection (a), drive at an appropri-
33 ate reduced speed when approaching and crossing an in-
34 tersection or railway grade crossing, when approaching
35 and going around a curve, when approaching a hill crest,
36 when traveling upon any narrow or winding roadway,
37 and when special hazard exists with respect to pedes-
38 trians or other traffic or by reason of weather or highway
39 conditions.

40 (d) The speed limit on controlled-access highways and
41 interstate highways, where no special hazard exists that
42 requires a lower speed, shall in no event be lower than
43 fifty-five miles per hour and the speed limits specified
44 in subsection (b) hereof shall not apply.

Sec. 2. Establishment of State Speed Zones.—Whenever
2 the state road commissioner shall determine upon the
basis of an engineering and traffic investigation that any
speed limit set forth in this article is greater or less than
is reasonable or safe under the conditions found to exist
at any intersection or other place or upon any part of a
highway, said commissioner may determine and declare
a reasonable and safe speed limit thereat which shall be
effective at all times or during hours of daylight or dark-
ness or at such other times as may be determined when
appropriate signs giving notice thereof are erected at such
intersection or other place or part of the highway.

Article 10. Pedestrians’ Rights and Duties.

Section 8. Persons working on streets and highways.

Section 8. Persons Working on Streets and Highways.—
The driver of a vehicle shall yield the right-of-way to
persons engaged in maintenance or construction work on
a street or highway whenever he is notified of their pres-
ence by an official traffic-control device or flagman.


Section 3. Stopping, standing, or parking prohibited in specified places.
5. Removal of vehicles parked, etc., on controlled-access highway; liability for costs of removal and storage; liens for towing and storage.

Section 3. Stopping, Standing, or Parking Prohibited
in Specified Places.—(a) No person shall stop, stand, or
park a vehicle, except when necessary to avoid conflict
with other traffic or in compliance with law or the direc-
tions of a police officer or traffic-control device, in any of
the following places:
(1) On a sidewalk;
(2) In front of a public or private driveway;
(3) Within an intersection;
(4) Within fifteen feet of a fire hydrant;
(5) On a cross walk;
(6) Within twenty feet of a cross walk at an intersec-
tion;
(7) Within thirty feet upon the approach to any flash-
ing beacon, stop sign, or traffic-control signal located at
the side of a roadway;
(8) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings;

(9) Within fifty feet of the nearest rail of a railroad crossing;

(10) Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of said entrance (when properly signposted);

(11) Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

(12) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(13) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;

(14) At any place where official signs prohibit stopping;

(15) Within twenty feet of any mail receptacle served regularly by a carrier using a motor vehicle for daily deliveries, if such parking interferes with or causes delay in the carrier's schedule;

(16) Upon any controlled-access highway;

(17) At any place on any highway where the safety and convenience of the traveling public is thereby endangered.

(b) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful.

Sec. 5. Removal of Vehicles Parked, etc., on Controlled-Access Highway; Liability for Costs of Removal and Storage; Liens for Towing and Storage.—Whenever a vehicle has been stopped, parked or left standing upon any part of a controlled-access highway any police officer or employee of the state road commission, duly authorized by the commissioner, shall have the authority to remove or order the removal of the vehicle, by towing or otherwise, to the nearest available established garage or parking lot for
storage until called for by the owner or his agent. The
owner shall be liable for the reasonable cost of such re-
moval and storage, and until payment of such cost the
garage or parking lot operator may retain possession of
the vehicle subject to a lien for the amount due. The
garage or parking lot operator may enforce his lien for
towing and storage in the manner provided in section
fourteen, article eleven, chapter thirty-eight of this code
for the enforcement of other liens.

CHAPTER 115

(House Bill No. 44—By Mr. Speaker, Mr. Singleton,
and Mr. Watson)

[Passed February 21, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to amend and reenact section ten, article seven, chap­
ter seventeen-c of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to intervals
of space to be maintained by drivers of vehicles following
other vehicles on public roadways.

Be it enacted by the Legislature of West Virginia:

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

Article 7. Driving on Right Side of Roadway, Overtaking and
Passing, etc.

Section 10. Following too closely.

Section 10. Following Too Closely.—(a) The driver of
a motor vehicle shall not follow another vehicle more
closely than is reasonable and prudent having due regard
for the speed of such vehicles and the traffic upon and
the condition of the highway.
(b) It shall be unlawful for the operator of any motor
truck, registered for a gross weight of more than eight
thousand pounds, bus, special mobile equipment or any
motor vehicle drawing another vehicle operating upon any roadway outside of a business or residence district, to follow within two hundred feet of another motor truck, bus, special mobile equipment or any motor vehicle drawing another vehicle: Provided, That this provision shall not be construed to (1) prevent overtaking and passing, (2) apply upon any lane specially designated for the use of motor trucks or combinations of vehicles, or within any section of a roadway posted or marked as a "no passing zone," (3) apply to any convoy of vehicles of the military service of the United States or of this state and (4) apply to funeral processions.

(c) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to (1) funeral processions; or (2) any convoy of vehicles of the military service of the United States or of this state.

CHAPTER 116

(Senate Bill No. 260—By Mr. McKown and Mr. Carrigan)

[Passed March 9, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven and eight, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the identification and to flashing warning signal lights on school buses.

Be it enacted by the Legislature of West Virginia:

That sections seven and eight, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
Article 12. Special Stops Required.

Section 7. Overtaking and Passing School Bus.—(a) The driver of a vehicle on any street or highway 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 said driver shall not proceed until such school bus resumes motion, or until signaled by the driver or other authorized person or persons to proceed.

(b) 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 school bus sold or transferred to another owner by a county board of education, agency, or individual shall have all lettering removed or permanently obscured before sale or transfer is made.

(c) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

Sec. 8. Special Lighting Equipment on School Buses. —(a) The commissioner of motor vehicles is authorized to adopt standards and specifications applicable to lighting equipment on and special warning devices to be carried by school buses consistent with the provisions of this chapter, but supplemental thereto, and except that such standards and specifications may designate and permit the use of flashing warning signal lights on school buses for
the purpose of indicating when children are boarding or alighting from any said bus. Such standards and specifications shall correlate with and, so far as possible, conform to the specifications then current as approved by the Society of Automotive Engineers.

(b) It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus is stopped or is slowing down to stop on any street or highway for the purpose of permitting school children to board or alight from said school bus.

CHAPTER 117

(Com. Sub. for Senate Bill No. 15—Originating in the Senate Committee on Roads and Navigation)

[Passed March 9, 1963; in effect from passage. Approved by the Governor.]

AN ACT to repeal article one, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article one, relating to the motor vehicle safety responsibility law and the definitions of certain words and phrases used in said chapter seventeen-d.

Be it enacted by the Legislature of West Virginia:

That article one, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and a new article one be enacted in lieu thereof to read as follows:


Section 1. Definitions.

Section 1. Definitions.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section:

(a) Commissioner. The commissioner of motor vehicles of this state;
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(b) Person. Every natural person, firm, copartnership, association or corporation;

c) Driver. Every person who drives or is in actual physical control of a vehicle;

d) Operator. Every person, other than a chauffeur, who drives or is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle;

e) Chauffeur. Every person who is employed by another for the principal purpose of driving a motor vehicle and every person who drives a school bus transporting school children or any other motor vehicle when in use for the transportation of persons or property for compensation;

(f) Owner. A person who holds the legal title of a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purposes of this chapter;

g) Nonresident. Every person who is not a resident of this state;

(h) Vehicle. Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks;

(i) Motor Vehicle. Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails;

(j) Trailer. Every vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle;

(k) Semitrailer. Every vehicle with or without motive power designed for carrying persons or property and for
being drawn by a motor vehicle and so constructed that
some part of its weight and that of its load rests upon or
is carried by another vehicle.

CHAPTER 118

(Com. Sub. for Senate Bill No. 201—Originating in the Senate
Committee on Roads and Navigation)

[Passed March 6, 1963; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section ten, article three, chapter
seventeen-d of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the authority
of the commissioner of motor vehicles to reduce or increase
the security ordered to be deposited to compensate damages
as provided by article three, chapter seventeen-d of said
code.

Be it enacted by the Legislature of West Virginia:

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


Section

10. Authority of commissioner to decrease or increase amount of se­
curity.

Section 10. Authority of Commissioner to Decrease or
Increase Amount of Security.—The commissioner may
reduce or increase the amount of security ordered in any
case within six months after the date of the accident if,
in his judgment, the amount ordered is excessive or in­
adequate. In case the security orginally ordered has been
deposited, the excess deposit over the reduced amount
ordered shall be returned to the depositor or his personal
representative forthwith, notwithstanding the provisions
of section eleven of this article. In case the security origi­
nally ordered is inadequate, the commissioner may give
written notice to every such person required by his pre-
vious order to deposit security under this article that he
is required to deposit additional security in an amount
and within the time specified in such notice, which time
shall not be less than ten days after the giving of such
notice, or that upon the expiration of said time an order
of suspension as stated therein will become effective un-
less the person receiving said notice deposits such addi-
tional security.

CHAPTER 119
(House Bill No. 165—By Miss Tsapis)

(Passed February 18, 1963; in effect ninety days from passage. Approved by the
Governor.)

AN ACT to amend and reenact section three, article one, chap-
ter eight of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to membership
in association or league of municipalities.

Be it enacted by the Legislature of West Virginia:

That section three, article one, 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 3. Membership in association or league of municipalities.

Section 3. Membership in Association or League of
Municipalities.—Every municipality in this state is hereby
authorized and empowered to become a member of an
association or league of municipalities having for its
general purpose the exchange and dissemination of infor-
mation and ideas designed for the more efficient admini-
stration and conduct of municipal government and affairs.
In order to finance the maintenance of such organization,
each municipality is hereby authorized to pay into such
association or league annually, dues or membership fee
or fees in an amount to be fixed by the members thereof
at the annual meeting of such association or league of
municipalities. Such dues or membership fee or fees
may be appropriated by the council as a current expense
item and included in the annual budget.

CHAPTER 120
(Senate Bill No. 254—By Mr. Martini)

(Passed March 9, 1963; in effect ninety days from passage. Approved by the
Governor.)

AN ACT to amend and reenact section eight, article two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the change of boundaries of cities, towns or villages.

Be it enacted by the Legislature of West Virginia:
That section eight, article two, 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
8. Change of boundary of city, town or village.

Section 8. Change of Boundary of City, Town or Village.—Five per cent or more of the freeholders residing
in any city, town or village desiring to change the corporate limits thereof, may file their petition in writing
with the council thereof, setting forth the change proposed in the metes and bounds of such corporation, and
asking that a vote be taken upon the proposed change. Such petition shall be verified and shall be accompanied
by an accurate survey showing the territory embraced within the new boundaries. The council, upon bond in
penalty prescribed by the council with good and sufficient surety being given by petitioners, and conditioned to pay
the costs of such election if a majority of the votes cast are against the proposed change in boundary, shall thereupon order a vote of the qualified voters residing in such city, town or village to be taken upon the proposed change at a time and place therein to be named in the order, not less than twenty nor more than thirty days from the date thereof, and if it be proposed to include any additional territory within such corporate limits, the council shall, at the same time, order a vote of all the qualified voters residing in such additional territory, and of all persons, firms or corporations owning any part of such territory, whether they reside therein or not, to be taken upon the question on the same day, at some convenient place on or near such additional territory: Provided, That the additional territory to be included shall conform to the requirements of section one of this article, and the determination that the additional territory does so conform shall be reviewable by the circuit court on certiorari to the council. The election shall be held, superintended and conducted, and the result thereof ascertained, certified and returned, in the same manner and by the same persons as elections for city, town or village officers. The ballots cast on such question shall have written or printed on them the words:

☐ For Change of Corporate Limits
☐ Against Change of Corporate Limits

If a majority of all the votes so cast within such corporation be in favor of the proposed change, and no additional territory is proposed to be included therein, the corporate limits of such city, town or village shall thereafter be as proposed by such petition. But, if additional territory is proposed to be included in such corporate limits, such change shall not take effect unless a majority of all the votes cast by persons eligible to vote in such additional territory shall also be cast in favor of such change. Any firm or corporation may vote by its manager, president, or executive officer duly designated in writing by such firm or corporation.

When an election is held in any city, town or village respecting a change in the boundary thereof, another such election relating to the same territory or any part thereof shall not be held for a period of one year.
The provisions of this and the following section shall provide the exclusive procedure for effecting a change in the boundary of every city, town or village except municipalities which have adopted a home rule charter under the provisions of chapter eight-a of the code: *Provided, however,* That any city, town or village, otherwise authorized by said chapter eight-a or by special charter, may utilize the procedures respecting minor boundary adjustments set forth in section twenty-five, article six of said chapter eight-a: *Provided further,* That any such minor boundary adjustment shall not exceed thirty acres.

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**CHAPTER 121**

*(Com. Sub. for House Bill No. 263—Originating in the House Committee on the Judiciary)*

[Passed March 7, 1963; in effect from passage. Approved by the Governor.]

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, designated section ten-j; and to amend and reenact section ten, article three, chapter eight-a of said code, both relating to publication of notice of proposed ordinances.

**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 adding thereto a new section, designated section ten-j; and that section ten, article three, chapter eight-a of said code be amended and reenacted, all to read as follows:

**Chapter**

8. **MUNICIPAL CORPORATIONS**

8A. **MUNICIPAL HOME RULE**

**CHAPTER 8. MUNICIPAL CORPORATIONS**

**Article 4. Powers, Duties and Allied Relations of Municipal Corporations, Councils or Officers.**
Section 10-j. Adoption of Comprehensive Code; Notice and Procedure.

Section 10-j. Adoption of Comprehensive Code; Notice and Procedure.—Notwithstanding any provision of its existing charter to the contrary, if the governing body of the city shall propose to codify, reenact or enact a comprehensive code of ordinances for the city, it shall not be necessary to publish such code of ordinances in a newspaper or newspapers prior to the adoption thereof. At least five days before the meeting at which said code of ordinances is to be finally adopted, however, the governing body shall cause notice of the proposed adoption to be published in at least one newspaper of general circulation in said city, stating therein the general title or titles of the code of ordinances, the time and place of the proposed final adoption, and the place or places where, within the city, the entire proposed code of ordinances will be available for public inspection. A reasonable number of copies of the proposed code of ordinances shall be kept at such place and be made available for public inspection.

CHAPTER 8A. MUNICIPAL HOME RULE

Article 3. Home Rule Charters; Ordinances.

Section 10. Ordinance Procedure.—The governing body shall enact an ordinance in the cases specified in section nine of this article in accordance with the following requirements:

(1) An ordinance shall be read at not less than two meetings with at least one week intervening between each meeting;

(2) At least five days before the meeting at which such ordinance is finally adopted the governing body shall cause notice of the proposed adoption of said ordinance to be published in at least one newspaper of general circulation in said city for at least one publication, stating the subject matter of such ordinance and the time and place of the proposed final vote on adoption,
and as well the place or places within the city where such ordinance may be inspected by the public;

(3) An ordinance shall not be finally passed until after three days from the date of the publication and until all interested parties have been given an opportunity to attend a meeting of the council and be heard with respect to such ordinance.

A home rule charter may prescribe a procedure for the enactment of ordinances in greater detail than prescribed by this section, but the provisions of this section shall be required. A governing body may enact an ordinance under suspension of the rules prescribed by this section only in the case of a pressing public emergency making a procedure in accordance with the section dangerous to the public health, safety, or morals, and by the affirmative vote of two thirds of the members elected to the governing body. The nature of the emergency shall be set out in full in the ordinance.

CHAPTER 122

(Senate Bill No. 116—By Mr. Gainer)

[Passed March 4, 1963: in effect July 1, 1963. Approved by the Governor.]

AN ACT to amend and reenact section thirteen-a, article four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to tax on purchases of intoxicating liquors at retail within a municipality.

Be it enacted by the Legislature of West Virginia:

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

Article 4. Powers, Duties and Allied Relations of Municipal Corporations, Councils or Officers.

Section 13-a. Tax on purchases of intoxicating liquors at retail in municipalities; amount; how collected; distribution.
Section 13-a. Tax on Purchases of Intoxicating Liquors at Retail in Municipalities; Amount; How Collected; Distribution.—The governing authority of every municipal corporation, whether operating under a general, special or home-rule charter, may levy and collect a tax upon all purchases of intoxicating liquors at retail within a municipality. The tax shall be levied upon the purchaser and shall be added to and collected with the price of the purchase. The tax shall be equal to but not exceed the tax levied by the state upon a similar sale or the same sale.

Any ordinance imposing the tax authorized by this section shall be certified by the mayor or other chief officer of the municipality to the West Virginia liquor control commissioner. The commissioner by appropriate rules and regulations shall provide for the collection of such tax and for distribution thereof to the respective municipalities for which the same shall be collected. Such rules and regulations shall provide that all such taxes shall be deposited with the state treasurer and distributed quarterly by the treasurer upon warrants of the auditor payable to the municipality.

CHAPTER 123
(House Bill No. 341—By Mr. Abrams and Miss Tsapis)

(Passed March 8, 1963; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend article four-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-b, relating to the issuance and retiring of revenue bonds for the purpose of constructing, reconstructing and renovating any jail facility used for municipal purposes.

Be it enacted by the Legislature of West Virginia:
That article four-a, chapter eight 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-b, to read as follows:

**Article 4-a. Municipal Public Works; Bonds.**

Section 1-b. Bonds for construction and renovation of municipal jails.

**Section 1-b. Bonds for Construction and Renovation of Municipal Jails.**—Every municipality shall have the authority to issue revenue bonds for the purpose of constructing, reconstructing and renovating any jail facility used for municipal prisoners; and for the purpose of retiring such bonds, the municipality may pledge, for a period not to exceed twenty years, the proceeds derived from the imposition of fines and fees.

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**CHAPTER 124**

(House Bill No. 545—By Mr. Brotherton)

[Passed March 8, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-three and forty-seven, article five, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to period of required notice in advance of hearing on amendment to a zoning ordinance.

Be it enacted by the Legislature of West Virginia:

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

**Article 5. Urban and Rural Planning and Zoning.**

Section 23. Same; amendment of plan and ordinance after adoption.

Section 23. Same; Amendment of Plan and Ordinance After Adoption.—After the adoption of a comprehensive plan and ordinance, all amendments to it shall be adopted according to the procedure set forth in sections eighteen...
through twenty-two, except that publication of notice of
the time and place of hearing upon amendment of the
zoning ordinance shall be not less than fifteen days prior
to the date set for such hearing, and except that, if the
governing body of a city or the county court desires an
amendment, it may direct the planning commission to
prepare an amendment and submit it to public hearing
within sixty days after formal written request by the
governing body of a city or the county court.

Sec. 47. Same; Considered as Amendments to Comprehensive Plan; Procedure.—Amendments, supplements or
changes of the regulations of the zoning ordinance shall
be considered as amendments to the comprehensive plan.
Any proposed ordinance for the amendment, supplement,
change or repeal of the zoning ordinance not originating
from petition of the planning commission shall be referred
to the planning commission for consideration and report
before any final action is taken by the governing body of
a city or the county court.

Prior to the submission to the governing body of a city
or the county court of a planning commission petition or
a report on a proposed ordinance referred to it for an
amendment, supplement, change or repeal of the zoning
ordinance, the planning commission shall give notice and
hold a public hearing in the manner prescribed for adop-
tion of a comprehensive plan in section eighteen of this
article, except that publication of notice of the time and
place of hearing upon amendment, supplement, change or
repeal of the zoning ordinance shall be not less than fif-
ten days prior to the date set for such hearing.

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CHAPTER 125

(House Bill No. 187—By Miss Tsapis and Mr. D’Aurora)

[Passed March 6, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five-a, chapter eight of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated section one-a, defining the terms "policemen", "officers", "police officers" and "member of a paid police department".

Be it enacted by the Legislature of West Virginia:

That article five-a, chapter eight 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:

Article 5-a. Civil Service for Police Departments.

Section 1-a. Definitions.

Section 1-a. Definitions.—The words or term "policemen", "officers", "police officers" or "member of a paid police department", whenever used in this chapter, shall mean and include any person employed by a police department wherein the members thereof are paid, and who are clothed with the police power of the state in being authorized to carry deadly weapons, make arrests, enforce traffic and other municipal ordinances, issue summons for violations of traffic and other municipal ordinances, and perform other duties which are within the scope of active, general law enforcement.

CHAPTER 126

(House Bill No. 186—By Miss Tsapis and Mr. D’Aurora)

[Passed March 6, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article five-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to repeal of inconsistent acts and purposes of civil service law for paid police departments.
Be it enacted by the Legislature of West Virginia:

That section nineteen, 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:

Article 5-a. Civil Service for Police Departments.

Section 19. Inconsistent Acts Repealed; Purpose of Article.

All acts and parts of acts of the Legislature of the state of West Virginia, general, special, local or municipal charters, or parts thereof, in relation to any civil service measure affecting the paid police departments of any city or municipality inconsistent with this article shall be, and the same are hereby, repealed insofar as such inconsistencies shall exist. It is understood and intended by this article to furnish a complete and exclusive system for the appointment, promotion, reduction, removal and reinstatement of all officers and policemen of said police departments in all cities and municipalities of five thousand population or more, wherein the members of the police department are paid.

CHAPTER 127

(House Bill No. 306—By Mr. White and Mr. Seibert)

[Passed February 21, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article six, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to firemen's and policemen's pensions or relief funds, providing for the assessment of taxes and contributions from salaries to maintain such funds.
Be it enacted by the Legislature of West Virginia:

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

**Article 6. Fire Department, Fire Companies, and Firemen's and Policemen's Pensions or Relief Funds.**

**Section 14. Levy to maintain fund; gifts, etc.; assessments on members of departments; return of assessments.**

In every municipality there shall be a firemen's pension or relief fund and a policemen's pension or relief fund, which shall be maintained as follows: The council or other governing body of each municipality shall levy annually and in the manner provided by law for other municipal levies, and include within the maximum levy or levies permitted by law, and if necessary in excess of any charter provision, a tax at such rate as will, after crediting all interest, if any, to be received in such year from the investments of the respective boards, provide funds equal to the sum of (1) the full amount of estimated expenditures of the boards of trustees of the respective funds and (2) an additional amount equal to ten per cent of such estimated expenditures, said ten percent amount to be taken, accumulated and invested, if possible, as surplus reserve: Provided, however, That in no event shall such levy for each of the respective boards of trustees be less than one cent nor more than five cents on each one hundred dollars of all real and personal property as listed for taxation in such municipality: Provided, That in any city or municipality of eight thousand three hundred population or less the laying of the levies herein provided for shall be within the discretion of the common council or other body of like power and duties in such city or municipality.

The levies authorized under this section, or any part of them, may by the council or other governing body be laid in addition to all other municipal levies, and to that extent, beyond the limit of levy imposed by the charter
of such municipality; and such levies shall supersede and
if necessary exclude levies for other purposes if such
priority or exclusion is necessary under limitations upon
taxes or tax levies imposed by law.

Such corporations are authorized to take by gift, grant,
devise or bequest, any money or real or personal property,
upon such terms as to the investment and expenditure
thereof as may be fixed by the grantor or determined by
said trustees.

In addition to all other sums provided for pensions in
this section, it shall be the duty of every municipal cor-
poration to assess and collect from each member of such
fire department and police department each month, the
sum of four per cent of the actual salary or compensation
of such member; and the amount so collected shall be-
come a regular part of the firemen’s pension fund, if
collected from a fireman, and of the policemen’s pension
fund, if collected from a policeman.

Any member of a municipal fire or police department
who is released or who before retirement on any pension
severs his connection with said department, provided he
has served two full years or more, shall, upon request,
be refunded all deductions made from his salary, but
without interest. In event such refund is made and such
member subsequently reenters the department no credit
shall be allowed him for any former service, unless any
such member of a municipal fire or police department
repays to the pension fund all sums refunded to him
within one year from the date he reenters the department
with interest at the rate of six per cent per annum, and
provided further that any member who, at the time this
amendment becomes effective, has already reentered the
department, shall be allowed credit for any former service
upon repaying all sums withdrawn or refunded to him
within one year from the date this amendment becomes
effective with interest at the rate of six per cent per
annum, but in no case shall interest be charged for more
than three years.
AN ACT to amend article seven, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to payment of money out of municipal treasuries.

Be it enacted by the Legislature of West Virginia:

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

Article 7. Taxation and Finance.

Section 9. Payment of money out of municipal treasury; signing of orders by mechanical or electrical devices; forgery; penalty.

Section 9. Payment of Money Out of Municipal Treasury; Signing of Orders by Mechanical or Electrical Devices; Forgery; Penalty.—No money shall be paid out of any municipal treasury except upon an order duly signed by the municipal officers authorized to sign such order:

Provided, That such signatures may be made by means of such mechanical or electrical device as the municipal governing body may select. Such mechanical or electrical device for the making of such signatures shall be safely kept in the office of the municipal clerk so that no one shall have access thereto except the municipal officers authorized to sign such orders, the municipal clerk and such of their respective employees as may be authorized to have access thereto.

If the municipal officer or officers charged with the responsibility of keeping the afore-mentioned mechanical or electrical device wilfully or by neglect permit or make it possible for an unauthorized person to sign the
name of any municipal officer authorized to sign such
order by the use of any such mechanical or electrical
device upon any warrant, order or check, such munici-
pal officer or officers shall be personally liable, jointly and
severally, for the amount of any loss resulting to the
municipality.

If any person other than the persons authorized so to
do shall sign the name of any municipal officer authorized
to sign such order by the use of any such mechanical or
electrical device, or otherwise, upon any warrant, order
or check, he shall be guilty of forgery; and if any person
shall utter or attempt to employ as true such forged war-
rant, order or check, knowing the same to be forged, he
shall be guilty of a felony, and, upon conviction, shall be
confined in the penitentiary not less than two nor more
than ten years.

CHAPTER 129

(Senate Bill No. 108—By Mr. McKown)

[Passed March 9, 1963; in effect ninety days from passage. Approved by the
Governor.)

AN ACT to amend and reenact section two, article one, chapter
twenty of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to definitions of
terms used in the chapter of the code pertaining to natural
resources.

Be it enacted by the Legislature of West Virginia:

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

Article 1. Organization and Administration.
Section
2. Definitions.

Section 2. Definitions.—As used in this chapter, unless
the context clearly requires a different meaning:
“Agency” means any branch, department or unit of the state government, however designated or constituted.

“Alien” means any person not a citizen of the United States.

“Bag limit” or “creel limit” means the maximum number of wildlife which may be taken, caught, killed or possessed by any licensee.

“Board” means the water resources board of the department of natural resources.

“Citizen” means any native born citizen of the United States, and foreign born persons who have procured their final naturalization papers.

“Closed season” means the time or period during which it shall be unlawful to take any wildlife as specified and limited by the provisions of this chapter.

“Commission” means the natural resources commission.

“Commissioner” means a member of the advisory commission of the natural resources commission.

“Director” means the director of the department of natural resources.

“Fishing” or “to fish” means the taking, by any means, of fish, minnows, frogs, or other amphibians, aquatic turtles, and other forms of aquatic life used as fish bait.

“Fur-bearing animals” shall include (a) the mink, (b) the weasel, (c) the muskrat, (d) the beaver, (e) the opossum, (f) the skunk, and civet cat, commonly called polecat, (g) the otter, (h) the red fox, (i) the gray fox, (j) the wildcat, bobcat or bay lynx, and (k) the raccoon.

“Game” means game animals, game birds and game fish as herein defined.

“Game animals” shall include (a) the elk, (b) the deer, (c) the cottontail rabbits and hares, (d) the fox squirrels, commonly called red squirrels, and gray squirrels, and all their color phases—red, gray, black or albino, and (e) the raccoon.

“Game birds” shall include (a) the Anatidae, commonly known as swans, geese, brants and river and sea ducks, (b) the Rallidae, commonly known as rails, sora, coots, mudhens, and gallinales, (c) the Limicolae, commonly
known as shorebirds, plover, snipe, woodcock, sandpipers, yellowlegs, and curlews, (d) the Galli, commonly known as wild turkey, grouse, pheasants, quails and partridges (both native and foreign species), and (e) the Columbidae, commonly known as doves and the Icteridae, commonly known as blackbirds, redwings and grackle.

"Game fish" shall include (a) brook trout, (b) brown trout, (c) rainbow trout, (d) Kokanee salmon, (e) largemouth bass, (f) small-mouth bass, (g) Kentucky or spotted bass, (h) pickerel, (i) muskellunge, (j) walleyed pike, or pike perch, (k) rock bass, (l) white bass, (m) white and black crappie, (n) blue-gill sunfish and (o) other bream.

"Hunt" means to pursue, chase, catch or take any wild birds or wild animals.

"Lands" means land, waters, and all other appurtenances connected therewith.

"Migratory birds" means any migratory game or nongame birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States, known as the "Migratory Bird Treaty Act", for the protection of migratory birds and game mammals concluded, respectively, August sixteen, one thousand nine hundred sixteen, and February seven, one thousand nine hundred thirty-six.

"Nonresident" means any person who is a citizen of the United States and who has not resided continuously in the state of West Virginia for a period of six months immediately prior to the date of his application for a license or permit.

"Open season" means the time during which the various species of wildlife may be legally caught, taken, killed or chased in a specified manner, and shall include both the first and the last day of the season or period designated by the director.

"Person", except as otherwise defined elsewhere in this chapter, means the plural "persons", and shall include individuals, partnerships, corporations, or other legal entity.

"Preserve" means all duly licensed private game farm
lands, or private plants, ponds or areas, where hunting or fishing is permitted under special licenses or seasons other than the regular public hunting or fishing seasons.

"Protected birds" means all wild birds not included within the definition of "game birds" and "unprotected birds".

"Resident" means any person who is a citizen of the United States and who has resided continuously in the state of West Virginia for a period of six months or more immediately prior to the date of his application for a license or permit: Provided, That a member of the armed forces of the United States who is stationed beyond the territorial limits of this state, but who was a resident of this state at the time of his entry into such service, shall be considered a resident under the provisions of this chapter.

"Roadside menagerie" means any place of business, other than a commercial game farm, commercial fish preserve, place or pond, where any wild bird, game bird, unprotected bird, game animal, or fur-bearing animal is kept in confinement for the attraction and amusement of the people for commercial purposes.

"Take" means to hunt, shoot, pursue, lure, kill, destroy, catch, capture, keep in captivity, gig, spear, trap, ensnare, wound or injure any wildlife, or attempt to do so.

"Unprotected birds" shall include (a) the English sparrow, (b) the European starling, (c) the sharp-shinned hawk, (d) the Cooper's hawk, (e) the goshawk, (f) the cowbird, and (g) the crow.

"Wild animals" means all mammals native to the state of West Virginia occurring either in a natural state or in captivity, except house mice and rats.

"Wild birds" shall include all birds other than (a) domestic poultry—chickens, ducks, geese, guinea fowl, peafowls and turkeys, (b) Psittacidae, commonly called parrots and paraquets, and (c) other foreign cage birds such as the common canary, exotic finches and ring dove. All wild birds, either (a) those occurring in a natural state in West Virginia or (b) those imported foreign game birds, such as waterfowl, pheasants, partridges, quail and grouse,
regardless of how long raised or held in captivity, shall remain wild birds under the meaning of this chapter.

"Wildlife" means wild birds, wild animals, game and fur-bearing animals, fish (including minnows), frogs and other amphibians, aquatic turtles and all forms of aquatic life used as fish bait, whether dead or alive.

"Wildlife refuge" means any land set aside by action of the director as an inviolate refuge or sanctuary for the protection of designated forms of wildlife.

CHAPTER 130
(Senate Bill No. 65—By Mr. Gainer)

[Passed January 29, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections eighteen-a and eighteen-b, to provide for cooperation with the federal government in wildlife and fish restoration.

Be it enacted by the Legislature of West Virginia:

That article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections eighteen-a and eighteen-b, to read as follows:

Article 1. Organization and Administration.

Section 18-a. Cooperation with federal government in wildlife restoration and management.

Section 18-b. Cooperation with federal government in fish restoration and management.

Section 18-a. Cooperation with Federal Government in Wildlife Restoration and Management.—The state of West Virginia hereby assents to the provisions of the act of Congress entitled, "An act to provide that the United States shall aid the states in wildlife restoration projects and for
other purposes,” approved September second, one thousand nine hundred thirty-seven (Public Law number four hundred fifteen, Seventy-fifth Congress), and the director is hereby authorized, empowered and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife restoration projects, as defined in said act of Congress, in compliance with said act and with rules and regulations promulgated by the secretary of the interior thereunder. Funds accruing to the state from license fees paid by hunters shall not be diverted for any other purposes than those stated in section thirty-four, article two of this chapter.

Sec. 18-b. Cooperation with Federal Government in Fish Restoration and Management.—The state of West Virginia hereby assents to the provisions of the act of Congress entitled, “An act to provide that the United States shall aid the states in fish restoration and management projects and for other purposes,” (Public Law number six hundred eighty-one, Eighty-first Congress), and the director is hereby authorized, empowered and directed to perform such acts as may be necessary to the conduct and establishment of fish restoration and management projects as defined in said act of Congress, in compliance with said act and with rules and regulations promulgated by the secretary of the interior thereunder. Funds accruing to the state from license fees paid by fishermen shall not be diverted for any purposes other than those stated in section thirty-four, article two of this chapter.

CHAPTER 131
(Senate Bill No. 134—By Mr. Gainer)

[Passed February 14, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to unlawful methods of hunting and fishing.
Be it enacted by the Legislature of West Virginia:

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

Article 2. Game and Fish.

Section 5. Unlawful methods of hunting and fishing.

—Except as authorized by the director, it shall be unlawful at any time for any person to:

1. Shoot at or to shoot any wild bird or animal unless it is plainly visible to him;

2. Dig out, cut out or smoke out, or in any manner take or attempt to take any live wild animal or wild bird out of its den or place of refuge, except as may be authorized by regulations promulgated by the director or by law;

3. Make use of, or take advantage of, any artificial light in hunting for, or taking any wild animals or wild birds, except that artificial lights such as are ordinarily carried in the hand or on the person may be used for the purpose of taking raccoon, opossum or skunk; or to throw or cast the rays of a spotlight, headlight, or other artificial light, from any vehicle, on any animal or game bird, or attempt to do so, while having in his or their possession or under their control, or in any vehicle or conveyance in which they may be traveling, a cased or uncased firearm or other implement whereby any wild animal or wild bird could be killed, even though such animal be not shot at, injured or killed. The provisions of this subdivision shall not apply if it shall be proven that the headlights of a motor vehicle while traveling on a highway in the usual way, cast a light upon such animal, on or adjacent to such highway, and there was no attempt or intent to locate such animal;

4. Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or other airborne conveyance, an automobile, or other land conveyance, or from a motor-driven water conveyance, except as may be authorized by regulations promulgated by the director;
(5) Take any beaver or muskrat by any means other than by trap;

(6) Catch, capture, take or kill by seine, net, bait, trap or snare or like device of any kind, any wild turkey, ruffed grouse, pheasant or quail;

(7) Destroy or attempt to destroy needlessly or wilfully the nest or eggs of any wild bird or have in his possession such nest or eggs unless authorized to do so under regulations or under a permit by the director;

(8) Except as provided in section six of this article, carry an uncased or loaded gun in any of the woods of this state except during the open firearms hunting season for game animals and nonmigratory game birds within any county of the state, unless he has in his possession a permit in writing issued to him by the director: Provided, That this section shall not prohibit hunting or taking of unprotected species of wild animals and wild birds and migratory game birds, during the open season, in the open fields, open waters and open marshes of the state;

(9) Except as provided in section six of this article, carry an uncased or loaded gun on Sunday in any woods or on any highway, railroad right of way, public road, field or stream of this state, except at a regularly used rifle, pistol, skeet, target or trap shooting ground or range;

(10) To have in his possession a loaded firearm or a firearm from the magazine of which all shells and cartridges have not been removed, in or on any vehicle or conveyance, or its attachments, within the state, except as may otherwise be provided by law or regulation. Except as hereinafter provided, between five o'clock post-meridian of one day and seven o'clock antemeridian, eastern standard time, of the day following, any unloaded firearm, being lawfully carried in accordance with the foregoing provisions, shall be so carried only when in a case or taken apart and securely wrapped. During the period from July first to September thirtieth, inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms shall be permissible only
from eight-thirty o'clock postmeridian to five o'clock ante-
meridian, eastern standard time;

(11) Hunt, catch, take, kill, trap, injure or pursue
with firearms or other implement by which wildlife may
be taken, on Sunday, any wild animals or wild birds:
Provided, however, That traps previously and legally set
may be tended on Sunday, if the person so doing shall
not have firearms or long bow of any description in his
possession;

(12) Hunt with firearms or long bow while under the
influence of intoxicating liquor;

(13) Possess a ferret;

(14) Buy raw furs, pelts or skins of fur-bearing ani-
imals unless licensed to do so;

(15) Have in his possession or about his premises,
without the written permission of the director, any hunt-
ing or fishing paraphernalia which cannot be used law-
fully in this state for hunting or fishing, and any con-
servation officer shall remove and destroy such hunting
and fishing paraphernalia, whenever found in this state,
and the person or persons claiming ownership shall have
no recourse at law against such confiscation and destruc-
tion;

(16) Catch, take, kill, or attempt to catch, take or kill
any fish at any time by any means other than by rod,
line and hooks with natural or artificial lures unless
otherwise authorized by law or regulation issued by the
director: Provided further, That snaring of any species
of suckers, carp, fallfish and creek chubs through the ice
shall at all times be lawful;

(17) Employ or hire, or induce or persuade, by the
use of money or other things of value, or by any means,
any person to hunt, take, catch or kill, any wild animal
or wild bird except those species on which there is no
closed season, or to fish for, catch, take or kill any fish,
amphibian or aquatic life which is protected by the pro-
visions of this chapter or regulations of the director, or
the sale of which is prohibited;

(18) Hunt, catch, take, kill, capture, pursue, transport,
possess or use any migratory game or nongame birds in-
cluded in the terms of conventions between the United
States and Great Britain and between the United States
and United Mexican States for the protection of migratory
birds and game mammals concluded, respectively, August
sixteen, one thousand nine hundred sixteen, and Febru-
ary seven, one thousand nine hundred thirty-six, except
during the time and in the manner and numbers pre-
scribed by the Federal Migratory Bird Treaty Act and
regulations made thereunder;

(19) Kill, take, catch or have in his possession living or
dead, any wild bird, other than a game bird; or expose
for sale, or transport within or without the state any bird,
except as aforesaid. No part of the plumage, skin or body
of any protected bird shall be sold or had in possession
for sale, except mounted or stuffed plumage, skin, bodies
or heads of such birds legally taken and stuffed or
mounted, irrespective of whether such bird was captured
within or without this state, except the English or Euro-
pean sparrow (Passer domesticus), starling (Sturnus
vulgaris), sharpshinned hawk (Accipiter striatus),
Cooper's hawk (Accipiter cooperii), goshawk (Accipiter
gentilis), crow (Corvus brachyrhynchos) and cowbird
(Molothrus ater), which shall not be protected and the
killing thereof at any time is lawful;

(20) Use dynamite or any like explosives or poison-
ous mixture placed in any waters of the state for the
purpose of killing or taking fish. Any person violating
the provisions of this subdivision shall be guilty of a
felony, and, upon conviction thereof, shall be imprisoned
for not less than six months nor more than three years,
and, in the discretion of the court, may be fined not more
than five hundred dollars;

(21) Have both a bow and a gun in the fields or woods
at the same time;

(22) Have a crossbow in the woods or fields or use a
crossbow to hunt for, take or attempt to take any wild-
life;

(23) Take or attempt to take turkey, bear, elk or deer
with any arrow unless the same is equipped with a point
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152 having at least two sharp cutting edges measuring in  
153 excess of three fourths of an inch wide;  
154 (24) Take or attempt to take any wildlife with an  
155 arrow having an explosive head or shaft;  
156 (25) Shoot an arrow across any public highway or  
157 from aircraft, motor-driven watercraft, motor vehicle or  
158 other land conveyance;  
159 (26) Permit any dog owned by him or under his control  
160 to chase, pursue or follow upon the track of any game  
161 animal or game bird, either day or night, between the  
162 first day of May and the fifteenth day of August next  
163 following: Provided, however, That dogs may be trained  
164 on game animals and game birds, except deer and wild  
165 turkeys, and field trials may be held or conducted on the  
166 grounds or lands of the owner or by his bona fide tenant  
167 or tenants or upon the grounds or lands of another person  
168 with his written permission or on public lands, at any  
169 time: Provided further, That the person training said  
170 dogs does not have firearms or other implements in his  
171 possession during the closed season on such game animals  
172 and game birds, whereby game animals or game birds  
173 could be taken or killed; and  
174 (27) Conduct or participate in a field trial, water race  
175 or wild hunt hereafter referred to as a trial: Provided,  
176 however, That any person, group of persons, club or or-  
177 ganization may hold such a trial at any time of the year  
178 upon obtaining such permit as is provided for in section  
179 fifty-six of this article. The person responsible for obtain-  
180 ing said permit shall prepare and keep an accurate record  
181 of the names and addresses of all persons participating in  
182 said trial, and make same readily available for inspection  
183 by any conservation officer upon request.

CHAPTER 132  

(Senate Bill No. 316—By Mr. Millar)  

[Passed March 9, 1963; in effect July 1, 1963. Approved by the Governor.]  

AN ACT to amend and reenact section thirteen, article two,  
chapter twenty of the code of West Virginia, one thousand
Be it enacted by the Legislature of West Virginia:

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

Article 2. Game and Fish.

Section 13. Importation and liberation of wildlife.

Section 13. Importation and Liberation of Wildlife.—No person shall transport into or have in his possession within this state for purposes of liberation, or liberate within this state, any live wildlife from without the state, except as authorized by a permit from the director: Provided, that the director shall not be authorized to issue a permit to any person to transport into this state for the purpose of liberation, or to liberate within this state, any foxes, either red (Vulpes fulva) or gray (Urocyon cinereoargenteus), or coyote (Canis latrans). The director may issue at his direction such permit as he is authorized to issue, fix the term thereof and revoke it at his pleasure: Provided, however, That such permits may be issued to duly organized clubs having twenty-five or more members in the counties of Wyoming, Wayne and McDowell.

Any person violating any of the provisions of this section concerning foxes and coyotes shall be guilty of a misdemeanor, and, upon conviction thereof, shall for each offense be fined not less than one hundred nor more than three hundred dollars, or confined in jail not less than ten nor more than one hundred days, or be both fined and imprisoned within the limitations aforesaid.

CHAPTER 133

(Senate Bill No. 130—By Mr. Gainer)

[Passed March 7, 1963; in effect from passage. Approved by the Governor.]
hundred thirty-one, as amended, and to enact in lieu thereof a new section twenty-two, relating to the tagging, removing, transporting and reporting of deer, bear or wild turkey.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and that a new section twenty-two be enacted in lieu thereof, to read as follows:

Article 2. Game and Fish.

Section

2. Tagging, removing, transporting and reporting deer, bear and wild turkey.

Section 22. Tagging, Removing, Transporting and Reporting Deer, Bear and Wild Turkey.—Each person killing a deer, bear or wild turkey found in a wild state shall immediately after removing the entrails, but in any event, within one hour, and before transporting or removing the carcass in any manner from where it was killed, complete and attach thereto the game tag supplied with his or her hunting license. The game tag shall remain on the carcass until it is dressed for consumption.

If such game bird or game animal has been lawfully killed by a person not required to secure a license, or by a person who has previously killed another species of game bird or game animal for which a game tag is required, or by a person who has lost the tag supplied with his or her license, such person shall make and attach a tag to the carcass within the time specified after such killing. The tag shall bear in plain English, the name and address of the hunter, and the date of killing, or, if holding a license, the license number and the date and county where the game was killed.

The carcass of such game bird or game animal shall be delivered to a conservation officer or an official checking station for checking and retagging before it is either skinned or transported beyond the boundaries of the county adjacent to that in which the kill was made.

Every failure to have said tag or tags attached, or re-
moving or transporting such animal in any manner, or
failure to deliver the carcass to a conservation officer or
an official checking station for checking, as herein pro-
vided, shall subject the person so neglecting to the penal-
ties provided in this article.
Any deer, bear or wild turkey found and not tagged as
herein provided shall be forfeited to the state of West
Virginia to be disposed of as hereinafter provided and
may be seized by any officer whose duty it is to enforce
the game laws.

CHAPTER 134
(Senate Bill No. 131—By Mr. Gainer)

(Passed February 13, 1963; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section thirty-three, article
two, chapter twenty of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to
authority of the director of department of natural re-
sources to designate agents to issue licenses; the bonds to
be given, and fees to be charged by such agents.

Be it enacted by the Legislature of West Virginia:
That section thirty-three, article two, chapter twenty of the
code of West Virginia, one thousand nine hundred thirty-one,
as amended, be amended and reenacted to read as follows:

Article 2. Game and Fish.

Section 33. Authority of director to designate agents to issue licenses; bonds; fees.

Section 33. Authority of Director to Designate Agents to Issue Licenses; Bonds; Fees.—The director shall have
authority to appoint within any county as many persons
as his agents, with authority to issue licenses under the
provisions of this article, as may, in his opinion, be neces-
sary, in addition to the clerk of the county court of the
county, to serve the convenience of the public in pro-
curing such licenses. Each person so appointed as such
agent and license issuing authority shall, before issuing
any license, file with the director a bond payable to the
state of West Virginia, in the amount to be fixed by the
director at not less than one thousand dollars, conditioned
upon the faithful performance of his obligation to issue
licenses only in conformity with the provisions of this ar-
ticle and to account for all license fees received by him.
The form of such bond shall be prescribed by the attorney
general. No person, other than those designated as is-
suming agents by the director, shall sell licenses or buy
the same for purposes of resale.

Every person making application for any license shall
pay, in addition to the license fee prescribed therefor in
the later sections of this article, an additional fee of twen-
ty-five cents as compensation for the person issuing the
license, except when such license is purchased from a
state official, and the revenue from such fees collected
by county officials shall be paid into the general county
fund: Provided, That only one fee of twenty-five cents
shall be collected for issuing combination resident state-
wide hunting and fishing Class AB licenses, and no such
fee shall be collected for issuing a Class I or a Class J
license when either license is purchased in conjunction
with another license to which the stamp is to be affixed
as required by law.

CHAPTER 135

(House Bill No. 142—By Mr. Lilly)

[Passed February 14, 1963; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section thirty-eight, article two,
chapter twenty of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the revo-
cation of hunting licenses by the director of natural re-
sources.
Be it enacted by the Legislature of West Virginia:

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

Article 2. Game and Fish.

Section 38. Refusal or revocation of license or permit.

Section 38. Refusal or Revocation of License or Permit.—The director may, for cause, refuse a license or permit to any person or revoke a license or permit which had been granted.

In case the director desires to refuse a license to any person, he shall notify personnel authorized to issue licenses, in counties where it is expected such license may be sought, of the name and address of such person and such other information in relation thereto as he may desire to give, and such issuing authority shall not issue a license to such person thereafter, and shall report to the director any application made therefor. In case any issuing authority shall, after receiving such notice knowingly issue such license, he shall be guilty of a misdemeanor. The director may revoke any such license so wrongfully issued. The violation of any of the provisions of this chapter by any person holding a license shall be sufficient cause for the director to refuse or revoke a license.

All licenses and permits authorized by this chapter to be granted shall be deemed to have been granted by the director, and the power and authority to revoke such licenses is vested in the director. Upon the revocation of any license, the one to whom the same was issued shall, upon having knowledge of such revocation, forthwith deliver the license and tag so issued to him to the director, his agent, or the clerk of any county court. A clerk shall transmit the same to the director.

The hunting license of any person convicted under section eleven, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, shall be revoked, and such person shall not be issued any other hunting license for a period of five
34 years: Provided, That any person heretofore or hereafter
35 convicted of any offense under chapter sixty-one, article
36 seven, section eleven, other than a negligent shooting
37 which has resulted in the killing of a human being, after
38 the expiration of two years may petition the director
for reinstatement of all hunting license privileges and
39 if the director upon a hearing and full investigation finds
40 that the applicant has paid and satisfied all claims against
41 him, if any, and the circumstances at the time and the
42 nature of the offense indicate that he is not likely again
43 to commit a like or similar offense and that the public
44 good does not require that the applicant's hunting privi-
45 leges remain revoked or suspended, the director may
46 enter an order restoring full hunting privileges to the
47 applicant.

CHAPTER 136
(Senate Bill No. 109—By Mr. Gainer)

[Passed February 14, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-four-b, article two,
chapter twenty of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to Class J
national forest fishing license.

Be it enacted by the Legislature of West Virginia:

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

Article 2. Game and Fish.

Section
44-b. Class J national forest fishing license.

Section 44-b. Class J National Forest Fishing License.—
2 A Class J license shall be a national forest fishing license
3 and shall entitle the licensee to fish in waters within na-
4 tional forest land in West Virginia. It shall be issued only
5 to a nonresident holding a Class F or Class K license or a
6 resident holding a Class B or Class AB license. The fee
AN ACT to amend and reenact section fifty-four, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to license for privately-owned commercial shooting preserves.

Be it enacted by the Legislature of West Virginia:

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

Article 2. Game and Fish.

Section 54. License for privately-owned commercial shooting preserves.

Section 54. License for Privately-Owned Commercial Shooting Preserves.—1. The director may issue a license for privately-owned commercial shooting preserves to any person who meets the following requirements:

(a) Each commercial shooting preserve shall contain a minimum of three hundred acres in one tract of leased or owned land (including water area, if any) and shall be restricted to no more than three thousand contiguous acres (including water area, if any), except that preserves confined to the releasing of ducks only shall be
authorized to operate with a minimum of fifty contiguous
acres (including water area); and
(b) The exterior boundaries of each commercial shoot-
ing preserve shall be clearly defined and posted with
signs erected around the extremity at intervals of one
hundred fifty yards or less.

2. The director shall designate the game which may be
hunted under this section on which a more liberal season
may be allowed.

3. The operating licenses or permits issued by the di-
rector shall entitle holders thereof, and their guests or
customers, to recover not more than eighty per cent of
the total number of each species of game bird released
on the premises each year, except mallard, black duck,
ringneacketed pheasant, chukar partridge, and other non-
native game species upon which a one hundred percent
recovery may be allowed.

4. Except for the required compliance with the re-
striction on the maximum number of released birds that
may be recovered from each preserve each year, as pro-
vided in subsections three and eight, shooting preserve
operators may establish their own shooting limitations and
restrictions on the age, sex and number of birds that may
be taken by each person.

5. In order to give a reasonable opportunity for a fair
return on a sizeable investment, a liberal season shall be
designated by the director during the six-month period,
beginning October first and ending March thirty-first.

6. All harvested game shall be tagged prior to being
either consumed on the premises or removed therefrom,
such tags to remain affixed until the game actually is
delivered to the point of consumption. The director shall
furnish numbered tags at nominal cost to shooting pre-
serve operators.

7. Each shooting preserve operator shall maintain a
registration book listing all names, addresses, and hunting license numbers of all shooters; the date on which they
hunted; the amount of game and the species taken; and
the tag numbers affixed to each carcass. An accurate rec-
ord likewise must be maintained of the total number, by
species, of game birds and ducks raised and/or purchased, and the date and number of all species released. These records shall be open to inspection by a delegated representa­tive of the director at any reasonable time, and shall be the basis upon which the game recovery limits in subsection three hereof shall be determined.

8. Any wild game found on commercial shooting preserves may be harvested in accordance with applicable game and hunting laws pertaining to open seasons, bag and possession limits, and so forth, as are established regularly by the director and the United States fish and wildlife service.

9. State hunting licenses shall be required of all persons, except nonresidents, hunting or shooting on shooting preserves.

10. The fee for such commercial shooting preserve license shall be fifty dollars per fiscal year for the first three hundred acres of the shooting preserve area, plus twenty-five dollars per fiscal year for each additional three hundred acres or part thereof.

CHAPTER 138
(Senate Bill No. 132—By Mr. Gainer)

[Passed February 13, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifty-six, relating to permits to hold field trial, water race or wild hunt.

Be it enacted by the Legislature of West Virginia:

That article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section fifty-six, to read as follows:
Article 2. Game and Fish.

Section

56. Permit to hold a field trial, water race or wild hunt.

Section 56. Permit to Hold a Field Trial, Water Race or Wild Hunt.—The director may issue a permit to any person, group of persons, club or organization to hold or conduct a field trial, water race or wild hunt, hereinafter referred to as a trial, upon receipt of a written application setting forth: (1) The name of the person, group of persons, club or organization, (2) the type or kind of trial, (3) the place and county in which the trial is to be held, and (4) the period or date on which the trial is to be held. The fee for the permit shall be five dollars.

CHAPTER 139

(Com. Sub. for House Bill No. 296—Originating in the House Committee on Forestry and Conservation)

[Passed March 6, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to amend chapter twenty by amending and reenacting sections one, two, three, four, five, six, seven and eight, article six, and by adding to said article six five new sections, designated nine, ten, eleven, twelve and thirteen; and to amend chapter twenty-two by repealing articles two-b and three, by repealing sections one, two, three, ten, eleven and twelve, article two-a, and by adding to said article two-a thirteen new sections, designated one, two, three, three-a, four, five, six, seven, eight, nine, ten, eleven and twelve, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and the same relating to the administration and control of surface mining, and the reclamation of lands affected thereby.

Be it enacted by the Legislature of West Virginia:

That chapter twenty be amended by amending and reenacting sections one, two, three, four, five, six, seven and eight,
article six, and by adding to said article six, five new sections, designated nine, ten, eleven, twelve and thirteen; and that chapter twenty-two be amended by repealing articles two-b and three, by repealing sections one, two, three, ten, eleven and twelve, article two-a, and by adding to said article two-a, thirteen new sections, designated one, two, three, three-a, four, five, six, seven, eight, nine, ten, eleven and twelve, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all to read as follows:

Chapter

20. NATURAL RESOURCES.
22. MINES AND MINERALS.

CHAPTER 20. NATURAL RESOURCES

Article 6. Reclamation.

Section

1. Division of reclamation; duties and functions; state land reclamation specialist; selection, duties and compensation.
2. Legislative purpose; apportionment of responsibility.
3. Definitions.
4. Duties of operators; requirements; procedures.
5. Performance bond; forfeiture; procedure; funds and uses.
6. Validity of existing permits and bonds.
7. When bond released and discharged.
8. Special reclamation fund; purposes and uses.
10. Adjudications, findings, etc., to be by written order; contents; notice.
11. Reclamation board of review.
12. Appeals to board; hearing, record, findings and orders of board.
13. Appeal from order of board.

Section 1. Division of Reclamation; Duties and Functions; State Land Reclamation Specialist; Selection, Duties and Compensation.—The division of reclamation, herein created and established, shall have within its jurisdiction and supervision all lands and areas of the state mined or susceptible of being mined for the removal of minerals and all other lands and areas of the state deforested, burned over, barren or otherwise denuded, unproductive, and subject to soil erosion and waste, except land being utilized in the production of agricultural commodities. Included within such lands and areas shall be lands seared and denuded by chemical operations and processes, abandoned coal mining areas, swamplands, lands and areas subject to flowage easements and backwaters from river locks and dams, and river, stream, lake and pond
shore areas subject to soil erosion and waste. The jurisdic-
tion and supervision exercised by the division shall
be consistent with other provisions of this chapter, shall
be in cooperation with other offices and divisions of the
department, and shall not interfere with or encroach
upon powers, functions and services lawfully within the
jurisdiction of the government of the United States.

The chief of the division shall organize and staff his
division for the orderly, efficient and economical execu-
tion and administration of the provisions of this article
as an integral part of the department's natural resources
program.

The director of the West Virginia agricultural experi-
ment station at West Virginia University shall select and
designate a competent and qualified person and a mem-
ber of his staff to be state land reclamation specialist
who will study mining procedures and methods and their
relation to subsequent land reclamation of disturbed
areas. He shall also serve in a liaison and advisory ca-
pacity between the experiment station and agencies
with responsibilities or interests in reclamation programs
and projects. The director of the experiment station shall
fix the state land reclamation specialist's salary, which
shall be paid from university funds, and shall arrange
on the university campus for adequate office facilities,
stenographic and clerical assistance, and such other
supplies and materials as needed by the state land re-
clamation specialist. When performing services for such
agencies, his travel expenses may be paid from the
agency's funds. The state land reclamation specialist
shall study and develop reclamation programs and proj-
jects consistent with the provisions of this chapter and be
under the supervision and direction of the director of the
experiment station.

Sec. 2. Legislative Purpose; Apportionment of Respon-
sibility.—The Legislature finds and declares that the de-
partment of natural resources shall have jurisdiction and
control over land and soil aspects of surface mining op-
erations, and the restoration and reclamation of lands
surface mined and areas affected thereby, but that sur-
face mining as an industrial enterprise and occupation shall be under the jurisdiction and control and subject to the regulations of the state department of mines.

The director of the department of mines and the director of the department of natural resources shall correlate and coordinate their respective departmental programs and records so as to effect an orderly and harmonious administration of the provisions of this article.

Sec. 3. Definitions.—For the purpose of this article, the term "surface mining" shall include all industrial activity for the recovery of minerals except those subject to the provisions of articles one, two, four, five and seven of chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and, subject to such exception, shall include plant and equipment used in processing said minerals.

For the purpose of this article, a "surface mine" shall include all areas surface mined or being surface mined as well as adjacent areas ancillary to the operation together with preparation and processing plants, storage areas and haulageways: Provided, That such areas are sufficiently concentrated that they can be adequately supervised by one foreman: And provided further, That mines subject to the provisions of articles one, two, four, five and seven of chapter twenty-two of the code of West Virginia, as amended, are not "surface mines" within this definition.

For the purpose of this article, "disturbed land" shall include the area from which the overburden has been removed in surface mining operations, plus the area covered by the spoil, and any areas used in surface mining operations which by virtue of their use are susceptible to excessive erosion.

For the purpose of this article, "operator" shall mean any individual, a corporation, a partnership, an association or a trust which is granted a permit to engage in any activity covered by this article.

Sec. 4. Duties of Operators; Requirements; Procedures.—It shall be the duty of each operator to:
(1) Remove metal, lumber and other debris resulting from mining operations.

(2) Regrade in a manner to be established by rules and regulations of the director, in accordance with, but not limited to, the following principles of reclamation:

(a) Wherever practicable, and wherever spoil banks form adjoining ridges or peaks above the level of the coal seam from which such spoil banks have been removed, grade the surface of such spoil banks so as to reduce the depressions between the peaks of such spoil banks to a surface which will be a rolling topography. Such grading shall be done in such a way as will minimize erosion due to rainfall and will also eliminate steep grades between peaks and make the surface more suitable for tree cutting or logging operations or for cattle grazing. Such grading shall be done in a manner which will minimize, as far as practicable, the presence of large rocks, or materials which would be toxic to plant life, on the surface of the graded area. Where spoil banks consist of single isolated peaks, and where such peaks extend above the level of the coal seam from which such spoil banks have been removed, such peaks shall be graded to an approximately level surface having a width of not less than fifteen feet.

(b) Wherever the final cut of an operation is not to be used for water impoundment as provided for in subsection (5), and wherever such final cut is within a reasonable grading distance of overburden deposits, and wherever such overburden deposits are composed of materials which are suitable for the support of tree growth, or the growth of grasses or other reclamation vegetation, or where such material reasonably can be expected to become suitable by natural leaching and weathering processes, such overburden material shall be graded so as to cover the bottom of such final cut.

In planning and executing surface mining operations the operator shall at all times have proper regard for the duties imposed by paragraphs (a) and (b) of this subsection and shall exercise all reasonable and practical measures required so as not unnecessarily to lose or make
unavailable overburden material for the grading required
by paragraphs (a) and (b).

(3) Where the outside spoil deposit is made on a steep
hillside, rocks that have rolled down into a cleared valley
shall be placed back at the toe of the hillside or deposited
at some equally suitable location.

(4) Seal off with a fill all openings from underground
mining operations at the base of the final cut. Such seal­ing off with a fill shall be done in such a way as to avoid
creating danger from the impoundment of large quan­
tities of water.

(5) Where the operator elects to impound water to
provide lakes or ponds for wildlife, recreational or water
supply purposes, such operator shall file formal request
with the department of natural resources and receive
approval before such ponds or lakes can be created in
impounding such water. In making such improvements
such operator must avoid the creation of conditions that
might encourage slides, acid formation or flood hazard.

(6) Plant in a manner so as to establish a satisfactory
cover of trees, shrubs, grasses or vines upon the part of
the area of land affected where such revegetation is prac­
ticable, within a reasonable length of time, or offer to
deposit with the soil conservation district, in which the
operation covered by such permit is located, a sufficient
amount of money to reclaim, insofar as planting, the area
of land affected, as estimated by the district. If the dis­
trict assumes responsibility for the planting, the director
shall release the bond and return the security given in
lieu of bond.

The intent of this section is to, insofar as reasonably
practical, restore the land to a desirable purpose and use.
The director may, in the exercise of his sound discretion,
when not in conflict with the intent of this section, modify
such requirements to bring about a more desirable land
use, including but not limited to industrial sites, sanitary
landfills, recreational areas, building sites, etc.: Provided,
however, That the person, firm, corporation, or agency
making such modifications will execute contracts, post
bond or otherwise insure full compliance with this sec-
tion in the event such modified program is not carried
to completion within a reasonable length of time.

For failure to complete the duties of the operator
within a reasonable length of time, as prescribed by the
director, and after receipt of a thirty-day notice in writ-
ing from the director, which notice may be sent by reg-
istered or certified mail to the operator, at his last known
address, that any one or more of such things have not
been done, the permit covering the particular operation
shall be revoked by the director and the performance
bond shall be forfeited, and any other permits that may
have been issued to the operator involved shall be sus-
pended, unless the operator shall submit a plan of
reclamation suitable to the director and accepted by him
within said thirty-day period. Unless the operator car-
ries out the plan of reclamation accepted by the director,
within the time limits prescribed in such plan, the direc-
tor shall revoke the permit covering the particular
operation, and forfeit the performance bond, and any
and all other permits that may have been issued to the
operator involved shall be revoked and any and all per-
formance bonds shall be forfeited.

Any operator whose mining permit has been revoked
shall not be eligible to receive another such permit or to
have suspended permits reinstated until he shall have
complied with the requirements of all the laws in respect
to former permits issued him.

Sec. 5. Performance Bond; Forfeiture; Procedure;
Funds and Uses.—Upon default in the performance of the
conditions of the performance bond, the director shall
give notice to the attorney general and it shall be his
duty to collect the forfeiture without delay.

All such forfeitures hereafter collected, as provided
in this article, shall be deposited with the state treasurer
in a special fund to be designated “Surface Mining Recla-
mation Fund,” to the credit of the department and shall
be expended to reclaim and rehabilitate land disturbed
in accordance with the provisions of this article.

It shall be the duty of the director to cause to be pre-
pared a plan for the reclamation and rehabilitation of
land affected in accordance with the provisions of section
four of this article and said director shall reclaim and
rehabilitate said lands in accordance with said plan and in
so doing the director shall comply with the provisions of
article three, chapter five-a of the code of West Virginia
in obtaining supplies, materials, equipment and contrac-
tual services deemed necessary by the director for the
proper reclamation and rehabilitation of said land. The
moneys in the fund shall be expended upon the lands upon
which the permit was issued and for which the bond was
posted. The director may expend any moneys remaining,
over and above that required to reclaim the area for
which the bond was posted, to reclaim any area covered
under the provisions of this article. The department may,
when deemed necessary, avail itself of any services which
may be provided by the state or federal governments.

Sec. 6. Validity of Existing Permits and Bonds.—The
provisions of chapter eighty-four of the acts of the Legis-
lature of West Virginia, regular session, one thousand nine
hundred thirty-nine; the provisions of chapter eighty-five
of the acts of the Legislature of West Virginia, regular
session, one thousand nine hundred forty-five; the pro-
cessions of chapter ninety-nine of the acts of the Legislature
of West Virginia, regular session, one thousand nine hun-
dred fifty-nine; the provisions of chapter one hundred
thirty-three of the acts of the Legislature of West Virginia,
regular session, one thousand nine hundred sixty-one,
shall continue to be in full force and govern in all re-
spects every existing right for surface mining operations,
every outstanding permit for surface mining operations
and every existing cash or other bond posted in connec-
tion therewith, and the enactment of this article shall
not affect any offenses or act committed or done, or any
penalty or forfeiture incurred, or any right established,
accrued, or accruing before the day this law takes effect.
Any money received from the forfeiture of bonds given
under the provisions of said acts shall be deposited in
the same fund and used in the same manner as forfeitures
under this article. Every operator under an existing per-
mit, under which actual mining operations have not been
commenced prior to the effective date of this article,
shall nevertheless be required to perform all duties specified in section four of this article, and for failure to do so, his bond shall be forfeited and he shall be subject to all other penalties provided by the above mentioned former acts. Every such operator shall be required to comply with the provisions of section four of this article under which actual mining operations have not been commenced prior to the effective date of this article.

Sec. 7. When Bond Released and Discharged.—Upon satisfactory completion of all requirements of law under the permit granted to any operator pursuant to the provisions hereof, the director of the department of natural resources shall issue to the operator a certificate releasing and discharging the bond and surety thereon, or shall cause to be returned to the operator any securities given under section five, article two-a, chapter twenty-two of the code.

Sec. 8. Special Reclamation Fund; Purposes and Uses.—The Legislature finds and declares that lands within this state have been subjected to surface mining operations and have not been reclaimed in accordance with modern standards and which are not now covered by bond to guarantee such reclamation. This Legislature further finds and declares that the cost of reclaiming these lands will be nine hundred thousand dollars. The Legislature has devised a method of collecting special fees, as set forth in section three-a, article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, for the reclamation and rehabilitation of the above referred to lands and accordingly there is hereby created a special fund designated “Special Reclamation Fund.” The purpose of this fund shall be solely that of a depository for special reclamation fees collected, pursuant to sections three and three-a, article two-a, chapter twenty-two, as amended, which said special fees shall be used only for the purpose of reclaiming and rehabilitating the lands above referred to. The special reclamation fund shall be administered by the director of the department of natural resources. Said director shall cause to be prepared plans for the
reclamation and rehabilitation of lands herein above referred to and shall prepare specifications for reclamation of said lands, and said director, as funds become available in the special reclamation fund, shall reclaim and rehabilitate said lands in accordance with said plans and specifications, and in so doing the director shall comply with the provisions of article three, chapter five-a, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, in obtaining supplies, materials, equipment and contractual services deemed necessary by the director for the purposes of reclamation and rehabilitation of said lands.

The special reclamation fund shall remain in existence until such time as special reclamation fees have been collected and expended in the net amount of nine hundred thousand dollars, after refunds provided for in section three-a, article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

Sec. 9. Rules and Regulations.—The director shall promulgate rules and regulations for the effective administration of this article.

Sec. 10. Adjudications, Findings, etc., to Be by Written Order; Contents; Notice.—Every adjudication, determination or finding by the director affecting the rights, duties or privileges of any person subject to this article shall be made by written order and shall contain a written finding of fact by the director of the facts upon which the adjudication, determination or finding is based. Notice of the making of such order shall be given to the person whose rights, duties or privileges are affected thereby by mailing a true copy thereof to such person by registered mail.

Sec. 11. Reclamation Board of Review.—There is hereby created a reclamation board of review consisting of five members appointed by the governor with the advice and consent of the senate for terms of five years, except that the terms of the first five members of said board shall be for one, two, three, four and five years, respectively, as designated by the governor at the time
of the appointment, except that any vacancy in the
office of member of said board shall be filled by appoint-
ment by the governor for the unexpired term of the
member whose office shall be vacant. Each vacancy
occurring on said board shall be filled by appointment
within sixty days after such vacancy occurs. One of the
appointees to such board shall be a person who, by rea-
son of his previous vocation, employment, or affiliations,
can be classed as a representative of coal surface mine
operators. One of the appointees to such board shall be
a person who, by reason of his previous training and
experience, can be classed as one learned and experienced
in modern forestry practices. One of the appointees to
such board shall be a person who, by reason of his
previous training and experience, can be classed as one
capable and experienced in the practice of agriculture.
One of the appointees to such board shall be a person
who, by reason of his previous training and experience,
can be classed as one capable and experienced in earth-
grading problems. One of the appointees to such board
shall be a person who, by reason of his previous train-
ing and experience, can be classed as one capable and
experienced in water conservation problems. Not more
than three members shall be members of the same poli-
tical party.

The board may designate an employee of the reclama-
tion division to act as its secretary. Such secretary shall
perform such duties as the board prescribes.

Three members constitute a quorum and no action of
the board shall be valid unless it has the concurrence
of at least three members. The board shall keep a record
of its proceedings.

Each member shall be paid as compensation for his
work as such member twenty dollars per day when
actually engaged in the performance of his work as a
member and when engaged in travel necessary in con-
nection with such work from funds appropriated for
such purpose. In addition to such compensation each
member shall be reimbursed for all traveling, hotel and
other expenses necessarily incurred in the performance
of his work as a member.
Annually, one member shall be elected as chairman and another member shall be elected as vice chairman. Such officers shall serve for terms of one year.

The governor may remove any member of the board from office for inefficiency, neglect of duty, malfeasance, misfeasance or nonfeasance, after delivering to such member the charges against him in writing, together with at least ten days' written notice of the time and place at which the governor will publicly hear such member, either in person or by counsel, in defense of the charges against him. If such member is removed from office, the governor shall file in the office of the secretary of state a complete statement of the charges made against such member and a complete report of the proceedings thereon. In such case the action of the governor removing such member from office is final.

Sec. 12. Appeals to Board; Hearing, Record, Findings and Orders of Board.—Any person claiming to be aggrieved or adversely affected by any order of the director or by his failure to enter an order may appeal to the reclamation board of review for an order vacating or modifying such order, or for such order as the director should have entered.

The person so appealing to the board shall be known as appellant and the director shall be known as appellee. Appellant and appellee shall be deemed to be parties to the appeal.

Such appeal shall be in writing and shall set forth the order or omission complained of and the grounds upon which the appeal is based. Where appellant claims to be adversely affected by an order, such appeal shall be filed with the board within thirty days after the date upon which appellant received notice by registered mail of the making of the order complained of. Notice of the filing of such appeal shall be filed with the director within three days after the appeal is filed with the board.

Within seven days after receipt of such notice of appeal, the director shall prepare and certify to the board at the expense of appellant a complete record of the proceedings out of which the appeal arises, including all documents
and correspondence in the director's file relating to the matter.

Upon the filing of such appeal, the board shall fix the time and place at which the hearing on the appeal will be held, which hearing shall be held within twenty days after notice of appeal is filed, and shall give appellant and the director at least ten days' written notice thereof by mail. The board may postpone or continue any hearing upon its own motion or upon application of appellant or of the director.

The filing of an appeal provided for in this section shall stay execution of the order appealed from.

The board shall hear the appeal de novo, and either party to the appeal may submit evidence.

For the purpose of conducting a hearing on an appeal, the board may require the attendance of witnesses and the production books, records and papers, and it may, and at the request of any party it shall, issue subpoenas for witnesses or *subpoenas duces tecum* to compel the production of any books, records or papers directed to the sheriff of the county where such witnesses are found, which subpoena shall be served and returned in the same manner as subpoenas in civil litigation are served and returned. The fees and mileage of sheriffs and witnesses shall be the same as those allowed in litigation in trial courts. Such fees and mileage expenses incurred at the request of appellant shall be paid in advance by appellant, and the remainder of such expenses shall be paid out of funds appropriated for the expenses of the division of reclamation.

In case of disobedience or neglect of any subpoena served on any person, or the refusal of any witnesses to testify to any matter regarding which he may be lawfully interrogated, the circuit court of the county in which such disobedience, neglect or refusal occurs, or any judge thereof, on application of the board or any member thereof, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. Witnesses at such hearings shall testify under oath, and any member of the board
may administer oaths or affirmations to persons who so testify.

At the request of any party to the appeal, a stenographic record of the testimony and other evidence submitted shall be taken by an official court shorthand reporter at the expense of the party making the request therefor. Such record shall include all of the testimony and other evidence and the rulings on the admissibility thereof presented at the hearing. The board shall pass upon the admissibility of evidence, but any party may at the time object to the admission of any evidence and except to the rulings of the board thereon, and if the board refuses to admit evidence the party offering same may make a proffer thereof, and such proffer shall be made a part of the record of such hearing.

If upon completion of the hearing the board finds that the order appealed from was lawful and reasonable, it shall make a written order affirming the order appealed from; if the board finds that such order was unreasonable or unlawful, it shall make a written order vacating the order appealed from and making the order which it finds the director should have made; and if the board finds that the director has unreasonably or unlawfully failed to act or enter an order, it shall enter such order as it finds the director should have made. Every order made by the board shall contain a written finding by the board of the facts upon which the order is based. Notice of the making of such order shall be given forthwith to each party to the appeal by mailing a certified copy thereof to each such party by registered mail.

The order of the board shall be final unless vacated by a circuit court on appeal.

Sec. 13. Appeal from Order of Board.—Any party adversely affected by an order of the reclamation board of review may appeal to the circuit court of Kanawha county or the circuit court of the county where the land involved in the controversy may be. Any party desiring to so appeal shall file with the board a notice of appeal designating the order appealed from and stating whether the appeal is taken on questions of law or questions of law and
A copy of such notice shall also be filed by appellant with the court and shall be mailed or otherwise delivered to appellee. Such notices shall be filed and mailed or otherwise delivered within thirty days after the date upon which appellant received notice from the board by registered mail of the making of the order appealed from. No appeal bond shall be required to make either an appeal on questions of law or an appeal on questions of law and fact effective.

The filing of a notice of appeal shall not automatically operate as a suspension of the order of the board. If it appears to the court that an unjust hardship to the appellant will result from the execution of the board’s order pending determination of the appeal, the court may grant a suspension of such order and fix its terms.

Within fifteen days after receipt of the notice of appeal, the board shall prepare and file in the court the complete record of proceedings out of which the appeal arises, including a transcript of the testimony and other evidence which has been submitted before the board. The expense of preparing and transcribing such record shall be taxed as a part of the costs of the appeal. Appellant shall provide security for costs satisfactory to the court. Upon demand by a party, the board shall furnish, at the cost of the party requesting the same, a copy of such record. In the event such complete record is not filed in the court within the time provided for in this section either party may apply to the court to have the case docketed, and the court shall order such record filed.

Appeals taken on questions of law, fact or both, shall be heard upon assignments of error filed in the cause or set out in the briefs of the appellant. Errors not argued by brief may be disregarded, but the court may consider and decide errors which are not assigned or argued.

The hearing before the court shall be upon the record made before the reclamation board of review. The court may set aside any findings of fact of the reclamation board of review which are clearly erroneous in view of the reliable, probative and substantial evidence on the
whole record, or which are determined by the court to involve a clearly unwarranted exercise of discretion. The judgment of the court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals of West Virginia, and jurisdiction is hereby conferred upon such court to hear and entertain such appeals upon application made therefor in the manner and within the time provided for civil appeals generally.

CHAPTER 22. MINES AND MINERALS

Article 2-a. Surface Mining.

Section
1. Legislative purpose; apportionment of responsibility.
2. Definitions.
3. Permit required; applications; issuance and renewals; fees and use of proceeds.
3-a. Special reclamation fees.
4. Inactive permits.
5. Performance bond or deposits.
7. Applicability of laws safeguarding life and property; rules and regulations; supervision of operations.
8. Maps, plans and locations.
9. Surface mining supervisor and inspectors; appointment and qualifications; compensation and expenses.
10. Duties of surface mining supervisor and inspectors generally; eligibility for permanent appointment; tenure; interest in mining operation; oath and bond.
12. Offenses; penalties; prosecutions.

Section 1. Legislative Purpose; Apportionment of Responsibility.—The Legislature finds and declares that the department of mines shall have jurisdiction and control over all aspects of surface mining as an industrial enterprise: Provided, however, That the jurisdiction and control over land and soil aspects of surface mining and the restoration and reclamation of lands surface mined and the areas affected thereby shall be under the jurisdiction and control of the department of natural resources. The director of the department of mines and the director of natural resources shall correlate and coordinate their respective departmental programs and records so as to effect an orderly and harmonious administration of the provisions of this article.

Sec. 2. Definitions.—For the purpose of this article, the term “surface mining” shall include all industrial activity for the recovery of minerals, except
those subject to the provisions of articles one, two, four, five and seven of chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and subject to such exception, shall include plant and equipment used in processing said minerals.

For the purpose of this article, a "surface mine" shall include all areas surface mined or being surface mined, as well as adjacent areas ancillary to the operation, together with preparation and processing plants, storage areas and haulageways: Provided, That such areas are sufficiently concentrated that they can be adequately supervised by one foreman: And provided further, That mines subject to the provisions of articles one, two, four, five and seven of chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, are not "surface mines" within this definition.

For the purpose of this article, "disturbed land" shall include the area from which the overburden has been removed in surface mining operations, plus the area covered by the spoil, plus any areas used in surface mining operations which by virtue of their use are susceptible to excessive erosion.

For the purpose of this article, "operator" shall mean any individual, a corporation, a partnership, an association or a trust which is granted a permit to engage in any activity covered by this article.

Sec. 3. Permit Required; Applications; Issuance and Renewals; Fees and Use of Proceeds.—It shall hereafter be unlawful for any person, firm, partnership, association, trust or corporation, to engage in surface mining without having first obtained from the department of mines a permit therefor as provided in this section. Application for a surface mining permit shall be made in writing on forms prescribed by the director and shall be signed and verified by the applicant, its principal executive officer or officers and a majority of its board of directors or persons performing similar functions (or, if there is no board of directors or persons performing similar functions, by the majority of the persons having the power of control over the
management of the applicant). The application, in addition to such other information as may be reasonably required by the director shall contain the following information: (1) The common name and geologic title, where applicable, of the mineral or minerals to be extracted; (2) a map as provided in section eight hereof; (3) the owner or owners of the surface of the land; (4) the owner or owners of the mineral; (5) the source of the operator's legal right to enter and conduct operations on the land covered by the permit; (6) a reasonable estimate of the number of acres of land that will be disturbed by mining on the area to be covered by the permit during the ensuing one and one-half years; (7) the permanent and temporary postoffice addresses of the applicant and of the owners of the surface and the mineral; (8) whether any surface mining permits are now held and the numbers thereof; (9) the names and postoffice addresses of every officer, partner, director (or person performing a similar function), of applicant, together with all persons, if any, owning of record or beneficially (alone or with associates), if known, ten per cent or more of any class of stock of the applicant; (10) if known, whether applicant, any subsidiary or affiliate or any person, partnership, association, trust or corporation controlled by or under common control with applicant, or any person required to be identified by item (9) above, has ever had a surface or strip mining permit issued under the laws of this state revoked or has ever had a surface or strip mining bond, or security deposited in lieu of bond, forfeited.

Upon filing of an application in proper form accompanied by the fees and bond or other security required by this article, the director shall issue the permit applied for, unless the director finds that the applicant is or has been affiliated with or managed, or controlled by, or is or has been under common control with a person, partnership, association, trust or corporation which has had a surface or strip mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this state: Provided, however, That no surface mining permit shall be refused because of any past revocation of a permit or forfeiture of a bond or
other security if, after such revocation or forfeiture the
lands disturbed have been properly reclaimed without
cost to the state or there has been paid into the surface
mining reclamation fund such sum as the director of
the department of natural resources finds is adequate to
reclaim such lands.

The permit shall be valid for one year from its date
of issue. Upon verified application, containing such in-
formation as the director may reasonably require, accom-
panied by such additional fees, bond or other security
as is required by this article, the director shall from year
to year renew the permit.

Except as otherwise herein provided, a registration
fee of ten dollars shall be paid to the department of
mines for each surface mine, and said registration fee
shall be paid upon application for the permit for such
surface mine. Registration fees for surface mine permits
other than permits for surface mining of coal shall be
deposited with the state treasurer to the credit of the
general revenue fund.

The registration fee for permits for surface mining of
coal whether by open cut, auger method or by highwall
mechanical mining shall be one hundred dollars. The
annual renewal fee for permits for surface mining of
coal shall be fifty dollars payable on the anniversary
date of said permit upon renewal.

Any operator who shall fail to request an annual re-
newal of any permit issued in accordance with this sec-
tion and any operator who fails to pay any fees provided
for in this article shall, in the discretion of the director,
have his permit revoked by said director.

An operator who has been issued a surface mining per-
mit may use any of the usual methods of mining, in-
cluding the auger method or highwall mechanical min-
ing or a combination of mining methods described in
section two, surface mining.

All registration and renewal fees for surface mining
of coal shall be collected by the director and shall be
deposited with the treasurer of the state of West Vir-
ginia to the credit of the special reclamation fund created
in section eight, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

Sec. 3-a. Special Reclamation Fees.—In addition to the fees required in section three of this article, every applicant for a permit to surface mine coal shall, before said permit be issued, pay to the director a special reclamation fee of thirty dollars for each acre of land affected in the mining operation.

For the purpose of this article, the area of land affected shall consist of the area from which the coal is actually produced after removal of the overburden, plus the acreage on which the overburden from the production area is deposited, delimited by lines perpendicular to the highwall; except that in highwall mechanical mining, the area of land affected shall consist of the area of surface disturbed immediately adjacent to the highwall, plus the acreage on which excavated material is deposited. The initial payment shall be based on the same number of acres for which bond is posted. Every operator who shall amend his permit to surface mine coal to include additional acreage as provided in section five hereof shall at the same time as additional bond is furnished as provided in said section five, pay to the director a special reclamation fee of thirty dollars for each additional acre of land to be included in said operator’s permit. Maps which are submitted as required in section eight shall indicate any affected areas from which coal has not been loaded. The director shall determine if special reclamation fees for each acre of land affected have been paid by such operator. In the event that all said fees have not been paid, then, said operator shall pay said fee or fees, as above set forth. In the event that said operator shall have paid a fee or fees for more acres than actually affected, the director shall certify said overpayment to the director of natural resources who shall have refunded out of the special reclamation fund such overpayment.

The director shall deposit with the treasurer of the state of West Virginia to the credit of the special reclamation fund all special reclamation fees collected. All
refunds made by authority of this section shall be made from said fund, which said fund was created in section eight, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended. Said fees shall be collected only until such time as the special reclamation fund shall expire as provided in said section.

Sec. 4. Inactive Permits.—The director, in his discretion, may issue an inactive status permit to any operator who has discontinued the production of coal on the area covered by surface mining permit or permits. The director shall, prior to the granting of such inactive status, ascertain from the director of natural resources that sufficient reclamation work on lands disturbed shall have been completed: Provided, however, That access roads constructed in a manner approved by the director of natural resources shall not be reclaimed: And provided further, That the operator shall maintain his right of entry. The annual renewal fee for inactive status permits shall be ten dollars.

Sec. 5. Performance Bond or Deposits.—Each operator who shall make application for a permit under section three of this article shall, at the time such permit is requested, furnish bond on a form to be prescribed and furnished by the director payable to the state of West Virginia and conditioned that the operator shall faithfully perform all of the requirements of this article and the provisions of article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended. The amount of bond shall be one hundred fifty dollars per acre of land based upon the number of acres of land which the operator estimates will be disturbed by surface mining during the next ensuing one and one-half years. The minimum amount of bond furnished shall be one thousand dollars. Such bond shall be executed by the operator and a corporate surety licensed to do business in the state of West Virginia: Provided, however, That in lieu of corporate surety, the operator may elect to deposit with the director cash or collateral securities as follows: Bonds of the United States and its possessions;
of the federal land banks; of the home owners' loan corporation; full faith and credit general obligation bonds of the state of West Virginia, or other states; and of any county, district or municipality of the state of West Virginia or other states. The cash deposit or market value of such securities shall be equal to or greater than the sum of the bond. The director shall, upon receipt of any such deposit of cash or securities, immediately place the same with the treasurer of the state of West Virginia whose duty it shall be to receive and hold the same in the name of the state in trust for the purposes for which such deposit is made. The operator making the deposit shall be entitled from time to time to receive from the state treasurer, upon the written order of the director, the whole or any portion of any securities so deposited, upon depositing with him, in lieu thereof, cash or other securities of the classes herein specified having value equal to or greater than the sum of the bond.

The director shall deliver to the director of the department of natural resources the corporate surety or a copy of the treasurer's receipt for collateral securities or cash deposited, together with a copy of the permit, the permit application and a copy of the map for which the bond is posted.

Within sixty days following the anniversary date of the permit, the operator shall post additional bond in the amount of one hundred fifty dollars per acre for each additional acre estimated to be disturbed during the next year following the anniversary date of the permit. At this time bond previously posted may be released for any areas upon which reclamation work has been completed as provided for in section seven, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

In the event that the operator's estimate of land to be disturbed is less than the actual area disturbed, the operator shall file additional bond sufficient to cover an amended estimate of lands to be disturbed by surface mining operations. No filing fee shall be required in the filing of additional bond.
It shall be unlawful for any owner or owners of surface rights or the owner or owners of mineral rights to interfere with the operator in the discharge of his obligations to the state for the reclamation of lands disturbed by him. If the owner or owners of surface rights or the owner or owners of mineral rights desire other operators to conduct mining operations on lands disturbed by the operator furnishing bond hereunder, it shall be the duty of said owner or owners to require that the other operator or operators have secured the necessary mining permit and furnished suitable bond as provided herein in the amount of one hundred fifty dollars an acre for that portion of the disturbed area required for such operations. The director shall certify to the director of the department of natural resources that such bond has been posted and permit issued. The director of the department of natural resources shall then release an equivalent amount of bonds of the operator originally furnishing bond on the disturbed area.

Sec. 6. Existing Permits and Performance Bonds.—Any operator holding a valid surface mining permit upon which tonnage has been produced within one year preceding the effective date of this article or any operator holding a valid surface mining permit upon which mining operations have not been commenced prior to the effective date of this article shall have the option of converting such permit, and the bonds posted therefor, to comply with the provisions of sections three and five of this article.

Sec. 7. Applicability of Laws Safeguarding Life and Property; Rules and Regulations; Supervision of Operations.—All provisions of the mining laws of this state intended to safeguard life and property shall extend to all surface mining operations insofar as such laws are applicable thereto. The director of the department of mines shall have the power and authority to promulgate reasonable rules and regulations to effectuate the purpose of this article and to protect the safety of those employed in and around surface mines.

For the administration of mining laws and regulations,
all surface mining operations shall be supervised by the surface mining inspection force as provided in section eight hereof. All underground mining operations of whatever character shall be supervised by the mine inspectors as provided in section four, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended. Oil and gas wells shall be supervised by the oil and gas division of the department of mines.

Sec. 8. Maps, Plans and Locations.—Except as otherwise provided in the code of West Virginia, one thousand nine hundred thirty-one, as amended, applications shall be accompanied by a United States geological survey topographic map on which the operator has indicated the location of the operation. A monument as prescribed by the department of mines shall be placed in an approved location near the operation. If operations under a single permit are not geographically continuous, the operator shall locate additional monuments and submit additional location maps before mining on other areas. Within sixty days following the anniversary date of the permit, the operator shall furnish the department of mines five copies of a map, prepared by a registered professional civil engineer, mining engineer or land surveyor, showing the area disturbed by operations. Such map shall be furnished no later than sixty days following the anniversary date of the permit. Such map shall also show completed reclamation work. Maps shall include a geologic survey sketch showing the location of the operation and be properly referenced to a permanent landmark, and all work shall have an accuracy of not less than one in three hundred. If no land has been disturbed by operations during the preceding year, the operator shall notify the department of mines of this fact. A final map shall be submitted within three months after completion of mining operations. Failure to submit maps or notices at specified times shall cause the permit to be suspended.

Sec. 9. Surface Mining Supervisor and Inspectors; Appointment and Qualifications; Compensation and Expenses.—Not more than six surface mining inspectors and
a state surface mining supervisor shall be appointed by
the director of the department of mines. All such ap-
pointees shall be citizens of West Virginia in good health,
not less than thirty nor more than fifty-five years of age,
of good character and reputation, and temperate in
habits. Each of them shall have had at least five
years’ practical experience in surface mining in West
Virginia. The surface mining supervisor shall be paid not
less than six thousand six hundred dollars and not more
than seven thousand five hundred dollars per annum, and
the surface mining inspectors shall be paid not less than
six thousand dollars and not more than six thousand
four hundred dollars per annum. Each shall be allowed
reasonable traveling expenses when itemized by the
claimant who shall verify upon oath that such expenses
were actually incurred in the discharge of his official
duties for the department of mines. Within the limits
provided in this section, the salary of the supervisor and
of each inspector shall be fixed by the director of the de-
partment of mines, and in fixing such salaries the director
shall consider ability, performance of duty, responsibility
and experience of each. All such salaries and expenses
shall be paid from the department of mines funds.

Sec. 10. Duties of Surface Mining Supervisor and In-
spectors Generally; Eligibility for Permanent Appoint-
ment; Tenure; Interest in Mining Operation; Oath and
Bond.—The surface mining supervisor and surface mining
inspectors shall make all necessary surveys and inspec-
tions of surface mining operations, shall effect practical
and effective administration and enforcement of all min-
ing laws and rules of the state applicable to surface min-
ing, and shall perform such other duties and services as
may be prescribed by the director of the department of
mines.

No person shall be eligible for permanent appointment
as surface mining supervisor or surface mining inspector
until he has served in a probationary status for a period
of one year to the satisfaction of the director of the de-
partment of mines. The surface mining supervisor and
the surface mining inspectors serving as such on the ef-
fective date of this section shall retain such rights as they
have accrued. Any person receiving permanent appointment as surface mining supervisor or surface mining inspector shall have permanent tenure until he becomes sixty-five years of age, subject to removal only for physical or mental impairment, neglect of duty, drunkenness, malfeasance in office, or official misconduct. No person serving as surface mining supervisor or surface mining inspector shall be interested, directly or indirectly, as owner, operator, or stockholder of any mining operation in the state of West Virginia, and the existence or acquisition of such interest on the part of any such inspector shall immediately vacate his position.

Before any such supervisor or inspector shall enter upon the discharge of his duties, he shall take and subscribe to the public official's oath as prescribed by the constitution of West Virginia, and shall execute a bond in the penal sum of two thousand dollars with surety approved by the director of the department of mines and conditioned upon the faithful discharge of his duties. Premiums on such bonds shall be paid from department of mines funds, and all such executed bonds and oaths shall be filed in the office of the secretary of state.

Sec. 11. Monthly Report by Operator.—The operator of every surface mine shall, on or before the end of each calendar month, file with the director a report covering the preceding calendar month on forms furnished by the director. Such reports shall state the number of accidents which have occurred, the number of persons employed, the days worked and the actual tonnage mined.

Sec. 12. Offenses; Penalties; Prosecutions.—Any person, partnership, association, member of such partnership or association, corporation, or trust, who shall conduct or allow to be conducted any surface mining operation, or any part thereof, without a permit or without having furnished the required bond, or who shall carry on such operation or be a party thereto on land not covered by a permit; or who shall fail to submit a monthly report as required in section eleven hereof, or who shall falsely represent any material fact in an application for a permit or in an application for a renewal
of a permit, and any owner or owners of surface or sur-
face rights or any owner or owners of minerals or mineral
rights who shall violate any provision of section five
hereof shall be guilty of a misdemeanor, and, upon con-
viction thereof, shall be fined an amount not exceeding
one thousand dollars for each such offense. It shall
be the duty of the director to institute prosecutions
for the violations of the provisions hereof. Any person
aforesaid, convicted under the provisions of this section,
shall, in addition to any fine imposed, pay to the director
for deposit in the surface mining reclamation fund an
amount sufficient to reclaim the area upon which such
conviction was based in accordance with the provisions
of section four, article six, chapter twenty of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended. The director may institute any suit or other
legal action necessary for the effective administration of
this article.

CHAPTER 140
(House Bill No. 156—By Mr. Baker and Mr. Casey)

[Passed February 15, 1963; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section eight, article seven,
chapter twenty of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to property
used for illegal purposes and providing for its seizure and
disposition.

Be it enacted by the Legislature of West Virginia:

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

Article 7. Law Enforcement, Procedures and Penalties.
Section
8. Property used for illegal purposes; seizure and disposition.
Section 8. Property Used for Illegal Purposes; Seizure and Disposition.—Any officer, when he arrests or otherwise takes a person into custody for violating any provision or provisions of this chapter, is hereby also authorized and empowered to take and impound any property found in the possession of the accused and susceptible of use in committing the offense of which the person is accused. Such property shall include firearms, fishing equipment, traps, boats, or any other device, appliance or conveyance, but shall not include dogs.

If the accused is acquitted the property seized shall be returned. If the accused is convicted and pays the fine, costs and other penalties, the property shall be returned, but if the accused fails to pay the fine and costs, the property shall be sold at public auction in such manner as the director may prescribe. The proceeds of the sale shall be applied toward the payment of the fine and costs. The remainder, if any, shall be paid to the owner of the seized property.

Whenever a person is convicted of a violation of this chapter a second time, the property seized at the time of arrest shall in any case be declared forfeited to the state and shall be sold in the manner provided by this section.

Property seized, the use of which is forbidden by this chapter, or which is unfit or unsafe for further use, shall be declared forfeited to the state and shall be disposed of by the director.

CHAPTER 141

(Senate Bill No. 99—By Mr. McCourt and Mr. Jackson)

[Passed March 1, 1963; in effect July 1, 1963. Approved by the Governor.]

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, designated article nineteen, relating to the qualification and registration of professional foresters.
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, designated article nineteen, to read as follows:

Article 19. Foresters.

Section

1. Use of descriptive title restricted.
2. Definitions.
3. Board of registration; appointment and terms of members.
4. Same; qualifications of members.
5. Same; Removal of members; vacancies.
6. General requirements for registration.
7. Expiration and renewal of license; fee.
8. Determination of qualifications for registration; firms, partnerships, etc., not to be registered.
9. Reciprocity.
10. Violations; penalties; enforcement of article; attorney general as legal advisor of board.

Section 1. Use of Descriptive Title Restricted.—No person shall use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a registered forester unless he shall be licensed as hereinafter provided. Nothing contained in this article shall be construed as preventing any person, firm, partnership, or corporation from practicing forestry, or managing woodlands or forests, or from removing any products therefrom, or planting trees on any land, in any manner desired.

Sec. 2. Definitions.—As used in this article:

(1) The term “forester” means a person who, by reason of his knowledge of the natural sciences, mathematics, silviculture, forest protection, forest management, forest economics and forest utilization, acquired by professional forestry education and/or practical experience, is qualified to engage in the practice of professional forestry as hereinafter defined;

(2) The term “registered forester” means a person who has been licensed pursuant to this article;

(3) The term “practice of professional forestry” means professional forestry services, including but not limited to consultation, investigation, evaluation, planning, or re-
sponsible supervision of any forestry activities when such
professional service requires the application of forestry
principles and techniques; and

(4) The term "board" means the state board of regist-
tration for foresters, provided for by this article.

Sec. 3. Board of Registration; Appointment and Terms
of Members.—A state board of registration for foresters is
hereby created whose duty it shall be to administer the
provisions of this article. The board shall consist of five
foresters who shall be appointed by the governor of West
Virginia within thirty days after the effective date of this
article, from among ten nominees recommended by the
West Virginia Chapter, Society of American Foresters, by
and with the consent of the senate, and who shall possess
the qualifications set forth under section four of this
article. The five members of the initial board shall be
appointed for terms of one, two, three, four and five years,
respectively. On the expiration of the term of any mem-
ber of the board, the governor, with the consent of the
senate, shall appoint in the manner hereinbefore provided,
for a term of five years, a registered forester from among
five nominees recommended by the West Virginia Chap-
ter, Society of American Foresters, and having the quali-
fications set forth in section four of this article. If the
governor fails to make appointment in ninety days after
expiration of any term, the board shall make the neces-
sary appointment. Each member shall hold office until the
expiration of the term for which such member is ap-
pointed and until a successor shall have been duly ap-
pointed and qualified.

Sec. 4. Same; Qualifications of Members.—Each mem-
ber of the initial board shall be a citizen of the United
States and a resident of this state, possessing the qualifica-
tions to become a registered forester under the terms of
this article, and shall have been engaged in the practice of
professional forestry for at least ten years. Each member
hereafter shall be a citizen of the United States and a
resident of this state, shall be a registered forester under
the terms of this article, and shall have been engaged in
the practice of professional forestry for at least ten years.
Sec. 5. Same; Removal of Members; Vacancies.—The governor may remove any member of the board for official misconduct or habitual or wilful neglect of duty. Vacancies in the membership of the board shall be filled for the unexpired term in the same manner as for an appointment for a full term.

Sec. 6. General Requirements for Registration.—The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as a registered forester: (1) Graduation from a curriculum in forestry approved by the board from a university or college approved by the board. Evidence of college graduation and completion of required courses shall be presented by means of an official college transcript which shall be filed permanently with the board; or (2) successfully passing a written examination designed to show knowledge approximating that obtained through graduation from a curriculum in forestry approved by the board from a university or college approved by the board, and a record of eight years or more of active practice in forestry work of a character satisfactory to the board, and indicating that the applicant is competent to practice professional forestry: Provided, That any citizen of this state who has engaged in the practice of professional forestry for eight years preceding the effective date of this section shall not be required to take an examination for registration. Upon filing with the board an application for registration, in such form as the board shall prescribe, and submitting therewith satisfactory information as to good character, such person shall be issued a certificate of registration: And provided further, That after eight years from the effective date of this article no person shall qualify as a registered forester unless such person shall have graduated from a curriculum in forestry approved by the board from a university or college approved by the board.

Applicants who have not graduated from a college or university may make the following substitution: The completion of the junior year in a forestry curriculum approved by the board in a university or college approved
by the board shall be considered as equivalent to two
years of the practice of professional forestry; the com-
pletion of the senior year without graduation in a forestry
curriculum approved by the board in a university or
college approved by the board shall be considered as
equivalent to three years of the practice of professional
forestry.

Sec. 7. Expiration and Renewal of License; Fee.—Li-
censes shall expire on the last day of the month of June
following their issuance or renewal and shall become in-
valid on that date unless renewed. It shall be the duty of
the secretary of the board to notify every person regis-
tered under this article, at his last registered address, of
the date of the expiration of his license and the amount of
the fee that shall be required for its renewal for one year;
such notice shall be mailed at least sixty days in advance
of the date of the expiration of said license. The fee for
the renewal of licenses shall be two dollars per year.

Sec. 8. Determination of Qualifications for Registration;
Firms, Partnerships, etc., Not to Be Registered.—Registra-
tion shall be determined upon the basis of individual per-
sonal qualifications. No firm, company, partnership, cor-
poration or public agency shall be licensed as a registered
forester.

Sec. 9. Reciprocity.—A person not a resident of and
having no established place of business in West Virginia
may use the title of registered forester in West Virginia
provided: (1) Such person is legally licensed as a regis-
tered forester in his own state or county and has submit-
ted evidence to the board that he is so licensed and that
the requirements for registration therein are equivalent
to the requirements of this article; and (2) the state or
county in which he is so licensed observes these same
rules of reciprocity in regard to persons originally licensed
under the provisions of this article.

Sec. 10. Violations; Penalties; Enforcement of Article;
Attorney General as Legal Advisor of Board.—Any per-
son who shall practice or offer to practice the profession of
forestry as a registered forester in this state without being
registered in accordance with the provisions of this article, or any person who shall use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a registered forester, without being registered in accordance with the provisions of this article, or any person who shall present or attempt to use as his own the license of another, or any person who shall give any false or forged evidence of any kind to the board or any member thereof in obtaining a license, or any person who shall attempt to use an expired or revoked license, or any person, firm, partnership or corporation who shall violate any of the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars. It shall be the duty of all duly constituted officers of the law of this state to enforce the provisions of this article and to prosecute any person, firm, partnership or corporation violating same. The attorney general of the state shall act as legal advisor of the board and render such assistance as may be necessary in carrying out the provisions of this article.

CHAPTER 142

(Com. Sub. for House Bill No. 29—Originating in the House Committee on the Judiciary)

[Passed March 9, 1963; in effect July 1, 1963. Approved by the Governor.]

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, designated article twenty, relating to the registration of physical therapists, prohibiting certain acts by unregistered physical therapists and providing penalties therefor.

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, designated article twenty, to read as follows:

Article 20. Physical Therapists.

Section

1. Definitions.
2. License required.
3. Board of physical therapists created; appointment, term, qualifications and compensation of members; powers and duties generally; register of licenses.
4. Qualifications of applicants for license; applications; fee.
5. Examination of applicants.
6. Issuance of certificate of registration; temporary permit; fee.
7. Registration without examination; reciprocity; fees.
8. Renewal of registration; fee; inactive list.
9. Denial, revocation and suspension of license.
10. Practice of physical therapy without license; penalty.
11. False oath; fraudulent representation; penalty.
12. Unauthorized practice of physical therapy.
13. Collections and expenditures; disposition of funds.

Section 1. Definitions.—The following words and phrases as used in this article shall have the following meanings unless the context otherwise requires:

1. “Physical therapy” shall mean the therapeutic treatment of any person by the use of massage, mechanical stimulation, heat, cold, light, air, water, electricity, sound, therapeutic exercises, including mobilization and training in functional activities, and the performance of tests and measurements as an aid in diagnosis or evaluation of function, for the purpose of limiting or preventing disability and alleviating or correcting any physical or mental condition. The use of roentgen rays and radium for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term “physical therapy” as used in this article.

2. “Physical therapist” shall mean a person who practices physical therapy.

3. “Board” shall mean the state board of examiners.

Sec. 2. License Required.—Six months after the effective date of this article, no person shall practice or hold himself out as being able to practice physical therapy in this state unless he is licensed in accordance with the provisions of this article: Provided, however, That nothing in this article shall prohibit any person licensed
in this state under any other article from engaging in
the practice for which he is licensed.

Sec. 3. Board of Physical Therapists Created; Appointment, Term, Qualification and Compensation of Members; Powers and Duties Generally; Register of Licenses.— There is hereby created the state board of examiners and registration of physical therapists to administer the licensing of physical therapists as defined in and set out in this article. The board shall consist of three members who shall be physical therapists. Immediately after the effective date of this article, the members of the board shall be appointed by the governor, by and with the advice and consent of the senate. Each member shall be appointed from a list of persons submitted by the West Virginia chapter of the American physical therapy association. Each physical therapist member shall be qualified under the provisions of this article, have at least three years' experience and be actively practicing in this state during the period of his incumbency. The term of appointments shall be one member for one year, one for two years, one for three years and thereafter each appointment shall be for a term of three years. The board shall designate one of its members as president and one as secretary-treasurer. Members of the board shall each receive ten dollars for every day actually spent in the performance of their duties and in addition thereto shall be reimbursed for their reasonable and necessary expenses in the performance of the same.

The board shall keep a record of its proceedings under this article and a register of all persons licensed under it. The register shall show the name of every living registrant, his last known place of business and last known place of residence, and the date and number of his registration and certificate as a licensed physical therapist. The board shall during the month of January of every year compile a list of physical therapists authorized to practice physical therapy and on request shall mail a copy of the list to the superintendent or administrator of every known hospital and every licensed doctor or surgeon in the state. Any other interested person in the
state is entitled to obtain a copy of that list on application to the board and payment of such amount as may be fixed by the board.

The board or its authorized representative shall investigate every alleged violation of this article coming to its notice and shall report to the prosecuting attorney all cases that in the judgment of the board warrant prosecution.

Sec. 4. Qualifications of Applicants for License; Applications; Fee.—To be eligible for license by the board as a physical therapist, each applicant must:

a. Be at least twenty-one years old.

b. Be of good moral character.

c. Not be addicted to the intemperate use of alcohol or narcotic drugs.

d. Be a citizen of the United States or have obtained a declaration of intention of becoming a citizen.

e. Present evidence that he is a graduate of a school of physical therapy approved by the American physical therapy association and the board: Provided, however, that any person who received his education in physical therapy outside of the United States may qualify for a license by fulfilling those requirements of the American physical therapy association and the medical board, including successful completion of a period of supervised clinical experience and a written examination provided by the board: Provided further, That on or before the thirtieth day of June, one thousand nine hundred sixty-six, any person who has practiced physical therapy in this state for five continuous years prior to the effective date of this article under the prescription and direction of a licensed physician or surgeon may qualify for a license by successful completion of a written examination provided by the board.

f. Either (1) pass to the satisfaction of the board an examination conducted by it to determine his fitness for practice as a physical therapist; or (2) be entitled to be licensed without examination as provided in section seven of this article.
Unless entitled to be licensed under section seven of this article, a person who desires to be licensed as a physical therapist shall apply to the board, in writing, on a blank furnished by the board. He shall embody in that application evidence under oath, satisfactory to the board, of his possessing the qualifications preliminary to examination required by this section. He shall pay to the board a fee of twenty-five dollars at the time of filing his application, no part of which shall be refunded.

Sec. 5. Examination of Applicants.—The board shall examine applicants for registration as physical therapists at such times and places as it may determine: Provided, That the board shall meet at least once each year for this purpose. The examination shall include a written examination which shall test the applicant’s knowledge of basic sciences, clinical science, physical therapy procedures and theory and such other subjects as the board may deem useful to test the applicant’s fitness to practice physical therapy as defined in this article.

Sec. 6. Issuance of Certificate of Registration; Temporary Permit; Fee.—The board shall register as a physical therapist each applicant who proves to the satisfaction of the board his fitness for a license under the terms of this article. It shall issue to each person licensed a certificate of registration, which shall be prima facie evidence of the right of the person to whom it is issued to represent himself as a physical therapist, subject to the conditions and limitations of this article.

The board may, upon request, issue to each properly qualified applicant for registration a temporary permit which shall authorize each applicant to practice physical therapy until the next meeting of the board. The applicant shall pay a fee of ten dollars for this privilege, none of which shall be refunded, nor shall it be applied to the fee for regular registration.

Sec. 7. Registration without Examination; Reciprocity; Fees.—The board shall register as a physical therapist any person who (1) applies for such registration after the effective date of this article, and (2) at the time of
the effective date of this article is a member of or is eligible for membership in the American physical therapy association or the American registry of physical therapists; and (3) is residing in the state at the time of the effective date of this article. At the time of making such application, such applicant shall pay the board a fee of twenty dollars.

The board shall license as a physical therapist, without examination, on the payment of a fee of twenty-five dollars, any applicant for registration who is a physical therapist registered or licensed under the laws of another state, territory, or the District of Columbia, if the requirements for registration or license of physical therapists in the state, territory, or the District of Columbia, in which the applicant was registered or licensed, were at the date of his registration substantially equal to the requirements in this article and if he meets all existing rules and regulations set by the board.

Sec. 8. Renewal of Registration; Fee; Inactive List. — Every physical therapist shall renew his license on or before January one of each year by payment of a fee of five dollars. Any license that is not so renewed shall automatically lapse. The board may in its discretion renew a lapsed license on the payment of all unpaid fees.

A person licensed under the provisions of this article, desiring to retire from practice temporarily, shall send a written notice to the board. Upon receipt of such notice, the board shall place the name of such person upon the inactive list. While remaining on this list the person shall not be subject to the payment of any fee and shall not practice physical therapy in the state. When such person desires to resume practice, application for renewal of license and payment of renewal fee for the current year shall be made to the board.

Sec. 9. Denial, Revocation and Suspension of License. — The board, after due notice and hearing, may refuse to license any applicant and may refuse to renew the license of any person, and may suspend or revoke the license of any person:
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(a) Who uses narcotic drugs or alcohol to the extent that it affects his professional competency;
(b) Who has been convicted of violating any state or federal narcotic law;
(c) Who is, in the judgment of the board, guilty of immoral or unprofessional conduct;
(d) Who has been convicted of a felony or a crime involving moral turpitude;
(e) Who is guilty, in the judgment of the board, of gross negligence in his practice as a physical therapist;
(f) Who has obtained or attempted to obtain license by fraud or wilful misrepresentation;
(g) Who has been declared mentally incompetent by a court of competent jurisdiction; or
(h) Who has treated or undertaken to treat human beings otherwise than by physical therapy and as authorized by this article, or who has undertaken to practice independent of the prescription or direction of a licensed doctor of medicine or surgery without limitation.

Sec. 10. Practice of Physical Therapy without License; Penalty.—Any person who is not licensed under this article as a physical therapist or whose license has been suspended or revoked, or whose license has lapsed and has not been renewed, who uses in connection with his name the words "physical therapy technician", "registered physical therapist", "physical therapist", or "physiotherapist" or uses the initials R.P.T., P.T.T., P.T., or any other letters, words or insignia indicating or implying that he is a licensed physical therapist, or who in any other way, orally or in writing or in print or by sign directly or by implication, represents himself as a licensed physical therapist, shall be guilty of a misdemeanor and for each offense upon conviction by any court of competent jurisdiction, shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail for a period of not less than thirty nor more than ninety days, or both, at the discretion of the court, and each day of such violation shall constitute a separate offense.
Sec. 11. False Oath; Fraudulent Representation; Penalty.—Any person who willfully makes a false oath or affirmation in any case in which an oath or affirmation is required by this article, or who obtains or attempts to obtain a license by any fraudulent representation shall be guilty of a misdemeanor and for each offense, upon conviction by any court of competent jurisdiction, shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail for a period of not less than thirty days nor more than ninety days, or both, at the discretion of the court.

Sec. 12. Unauthorized Practice of Physical Therapy.—A person licensed under this article as a physical therapist shall not treat persons by physical therapy or otherwise except under the direction and prescription of a licensed doctor of medicine or surgery. Nothing in this article shall be construed as authorizing a physical therapist or any other person to practice medicine, surgery, osteopathy, homeopathy, chiropractics, naturopathy, magnetic healing or any other form, branch or method of healing as authorized by the laws of the state of West Virginia. Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction by a court of competent jurisdiction, shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail for a period of not less than thirty days nor more than ninety days, or both, at the discretion of the court.

Nothing in this article shall be construed to prevent a person duly licensed to practice in the state of West Virginia under any other act from engaging in the practice for which he or she is duly licensed nor shall this article be construed to limit or prevent the practice of any form of therapy, massaging or related treatment by any person not licensed under this article, if such person does not in any way represent himself in any manner to be a licensed physical therapist.

Sec. 13. Collections and Expenditures; Disposition of Funds.—All money collected under the provisions of this article shall be deposited in the state treasury as pro-
AN ACT to amend article four, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to the regulation of parking around the state capitol, and providing penalties.

Be it enacted by the Legislature of West Virginia:

That article four, chapter five-a 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:

Article 4. General Services Division.

Section 1-a. Regulation of parking.

Section 1-a. Regulation of Parking.—The commissioner is vested with authority to regulate parking of motor vehicles in accordance with the provisions of this section with regard to the following state-owned property in the city of Charleston, Kanawha county:

(a) The east side of Duffy Street between Kanawha Boulevard and Washington Street, East;
(b) The west side of California Avenue between Kanawha Boulevard and Washington Street, East;

c) In the circle between the east and west wings of the state capitol;

d) Upon the state-owned grounds upon which State Office Building No. 3, 1800 Washington Street, East, is located;

e) Upon the state-owned grounds upon which State Office Building No. 4, 112 California Avenue, is located;

(f) In the state-owned parking garage at 212 California Avenue and upon the state-owned grounds upon which such parking garage is located;

g) Upon the state-owned property at Michigan Avenue and Virginia Terrace;

(h) Upon any other property now or hereafter owned by the state and used for parking purposes in conjunction with the state capitol or State Office Buildings Nos. 3 and 4.

The commissioner is authorized to promulgate rules and regulations respecting parking and to allocate parking spaces to public officers and employees of the state upon all of the afore-mentioned property of the state: Provided, that all parking spaces in the circle between the east and west wings of the state capitol shall at all times be kept available for parking by visitors at the capitol: Provided, however, that during sessions of the Legislature parking on the east side of Duffy Street between Kanawha Boulevard and Washington Street, East, and in the circle between the east and west wings of the capitol shall be subject to rules and regulations promulgated jointly by the speaker of the house of delegates and the president of the senate. Any person parking any vehicle contrary to the rules and regulations promulgated under authority of this section shall be subject to a fine of not less than one dollar nor more than twenty-five dollars for each offense. Justices of the peace in Kanawha county shall have jurisdiction of all such offenses.

The commissioner is authorized to employ such persons as may be necessary to enforce the parking rules and regulations promulgated under the provisions of this section.
CHAPTER 144

(Senate Bill No. 306—By Mr. Carson, Mr. President, and Mr. Carrigan)

[Passed March 7, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four, relating to the relocation of meeting places of governing bodies of political subdivisions in the event of an enemy attack or threatened enemy attack.

Be it enacted by the Legislature of West Virginia:

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


Section 1. Relocation due to emergency caused by enemy attack or threat thereof.

2. Conduct of public business and exercise of governmental functions at temporary location; validity of acts.

3. Provisions of article to control and supercede statutory and charter law.

Section 1. Relocation Due to Emergency Caused by Enemy Attack or Threat Thereof.—Whenever, due to an emergency resulting from the effects of enemy attack, or the anticipated effects of a threatened enemy attack, it becomes imprudent, inexpedient or impossible to conduct the affairs of local government at the regular or usual place or places thereof, the governing body of each political subdivision of this state may meet at any place within or without the territorial limits of such political subdivision on the call of the presiding officer or any two members of such governing body, and shall proceed to establish and designate by ordinance, resolution or other manner, alternate or substitute sites or places as the emergency temporary location, or locations, of govern-
ment where all, or any part, of the public business may be transacted and conducted during the emergency situation. Such sites or places may be within or without the territorial limits of such political subdivisions and may be within or without this state.

Sec. 2. Conduct of Public Business and Exercise of Governmental Functions at Temporary Location; Validity of Acts.—During the period when the public business is being conducted at the emergency temporary location, or locations, the governing body and other officers of a political subdivision of this state shall have and possess and shall exercise, at such location, or locations, all of the executive, legislative and judicial powers and functions conferred upon such body and officers by or under the laws of this state. Such powers and functions may be exercised in the light of the exigencies of the emergency situation without regard to or compliance with time consuming procedures and formalities prescribed by law and pertaining thereto, and all acts of such body and officers shall be as valid and binding as if performed within the territorial limits of their political subdivision.

Sec. 3. Provisions of Article to Control and Supersede Statutory and Charter Law.—The provisions of this article shall control and be supreme in the event it shall be employed notwithstanding any statutory, charter or ordinance provision to the contrary or in conflict herewith.

CHAPTER 145

(House Bill No. 331—By Mr. Mentz)

[Passed February 23, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article four, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county public assistance councils.
Be it enacted by the Legislature of West Virginia:

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

Article 4. County Public Assistance Councils.

Section 6. Offices and equipment.

Section 6. Offices and Equipment.—The county court shall provide adequate office space and equipment within the county.

CHAPTER 146
(Senate Bill No. 325—By Mr. Gainer)

(Passed March 9, 1963; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section ten, article four, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to assistants and employees of public assistance county councils.

Be it enacted by the Legislature of West Virginia:

That section ten, article four, 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 10. Assistants and employees.

Section 10. Assistants and Employees.—The county council, upon the recommendation of the county director and with the approval of the state department, shall appoint or employ, from a register of persons certified by the state department as qualified to perform the duties of the position to be filled, such assistants and employees as may be required.

The compensation of appointees and employees of the county council shall be fixed by the county council in
accordance with the compensation plan established by
the state director. In addition to their regular compensa-
tion, the county director and his subordinates shall be al-
lowed their necessary traveling expenses. Requisitions for
traveling expenses shall be accompanied by a sworn and
itemized statement which shall be filed with the county
clerk and permanently preserved as a public record.

CHAPTER 147

(House Bill No. 190—By Mr. Myles)

[Passed March 7, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, twenty-four and
twenty-six, article five, chapter nine of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, and to repeal sections twenty-one, twenty-two,
twenty-five, twenty-seven and twenty-eight of said article,
all relating to public assistance to the aged and eliminating
the requirement that a recipient of such assistance grant
a lien to the state upon real or personal property as a con­
dition to receiving such assistance.

Be it enacted by the Legislature of West Virginia:

That sections twenty-one, twenty-two, twenty-five, twenty­
seven and twenty-eight, article five, chapter nine of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, be repealed, and that sections three, twenty-four and
twenty-six of said article be amended and reenacted to read
as follows:

Article 5. Public Assistance and Medical Assistance for the
Aged.

Section

3. Aged persons.
21. Agreement to reimburse. (Repealed)
22. Lien against assets. (Repealed)
24. Certificate of amount of assistance paid.
25. Lien against real estate. (Repealed)
27. Exemptions. (Repealed)
28. Reimbursement to federal government. (Repealed)
Section 3. Aged Persons.—An aged person shall be eligible for public assistance who:

1. Has attained the age of sixty-five years.
2. Has resided in the state for at least one year immediately preceding application for public assistance.
3. Has not made an assignment or transfer of property for the purpose of qualifying for assistance.
4. Is not an inmate of a public institution (except as a patient in a medical institution).
5. Is not a patient in an institution for tuberculosis or mental diseases, nor has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof.
6. Is actually in need and has not sufficient income or other resources to provide a subsistence compatible with decency and health.

Sec. 21. Agreement to Reimburse.—This section is hereby repealed.

Sec. 22. Lien against Assets.—This section is hereby repealed.

Sec. 24. Certificate of Amount of Assistance Paid.—Under the rules and in the form prescribed by the state department, the county council shall execute and file with the clerk of the county court of the county wherein the recipient resides, or owns property, a certificate showing the amount of public assistance paid to an aged person.

Sec. 25. Lien against Real Estate.—This section is hereby repealed.

Sec. 26. Release of Liens.—All liens and claims held by the state upon real or personal property of an aged person by reason of such person having executed an agreement to reimburse as a condition to receiving public assistance are hereby released.

Upon the effective date of this section, the council shall enter an order releasing all liens held by the state in the county and the chairman of the council shall thereupon prepare, execute and acknowledge a release of each
such lien and deliver the same to the recipient of public assistance, his heirs or assigns, as the case may be, for recordation.

Sec. 27. Exemptions.—This section is hereby repealed.

Sec. 28. Reimbursement to Federal Government.—This section is hereby repealed.

CHAPTER 148
(House Bill No. 209—By Mr. White)

[Passed February 14, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article six, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the admission of indigent persons to hospitals in case of emergencies involving public assistance and relief.

Be it enacted by the Legislature of West Virginia:

That section thirteen, 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:

Article 6. General Relief.

Section 13. Emergencies.—If, in an emergency, an indigent person is admitted to a hospital without order of the county director, the hospital shall not receive payment for the services rendered unless the hospital, within ten days after the admission, sends to the county council of the county in which the person resides a report of the facts of the case, including a statement of the physician in attendance as to the necessity of immediate admission of the person to the hospital; and then, only if the county council assumes the cost of the services rendered.

If the hospital does not know the residence of the indigent person, the county council of the county where the
13 person resides, when such residence is finally determined, 
14 may assume the cost of services rendered, although the 
15 report required by this section was not made.

CHAPTER 149

(Senate Bill No. 101—By Mr. McCourt and Mr. McKown)

[Passed March 9, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to companies and platoons and how constituted; training of members and other peace officers; and salaries and bonds of members of the department of public safety.

Be it enacted by the Legislature of West Virginia:

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

Article 2. Department of Public Safety.

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 for in section two of this article, consist of four companies or platoons. Each company or platoon shall be composed of one captain, one lieutenant, one first sergeant, five sergeants, eleven corporals and such number of troopers as the superintendent may decide best, but such number of troopers in any company or platoon shall not at any time be less than twenty-five nor more than sixty-five.

The superintendent shall provide adequate facilities for the training of all members of the department and shall
15 prescribe a basic training course for newly enlisted mem-
16 bers. He shall also provide advanced or inservice training
17 from time to time for all members of the department. The
18 superintendent may, in his discretion, hold training
19 classes for other peace officers in the state without cost to
20 such officers, except actual expenses for food, lodging and
21 school supplies.
22 Members of the department shall receive salaries, as
23 follows:
24 The inspector shall receive an annual salary of seven
25 thousand three hundred twenty dollars; captains shall
26 each receive an annual salary of six thousand four hun-
27 dred twenty dollars; lieutenants shall each receive an an-
28 nual salary of six thousand dollars; the master ser-
29 geants and first sergeants shall each receive an annual
30 salary of five thousand five hundred twenty dollars; ser-
31 geants shall each receive an annual salary of five thou-
32 sand three hundred sixteen dollars; corporals shall each
33 receive an annual salary of five thousand sixteen dollars;
34 each newly enlisted trooper shall receive a salary of three
35 hundred thirteen dollars per month during the period of
36 his basic training, and upon the satisfactory completion of
37 such training and assignment to active duty each trooper
38 shall receive during the remainder of his first year's
39 service a salary of three hundred sixty-three dollars
40 monthly. During the second year of his service in the de-
41 partment each trooper shall receive an annual salary of
42 four thousand four hundred seventy-six dollars; during
43 the third year of his service each trooper shall receive an
44 annual salary of four thousand five hundred ninety-six
45 dollars; and during the fourth and fifth years of his serv-
46 ice and for each year thereafter, each trooper shall receive
47 an annual salary of four thousand seven hundred sixteen
48 dollars. Each member of the department entitled thereto
49 by the provisions hereof shall receive an increase in salary
50 over that hereinbefore set forth in this section, for grade
51 and rank, based on length of service, including that here-
52 tofore and hereafter served, with the department, as fol-
53 lows: For each five-year period of service with the de-
54 partment from the date of first enlistment, each member
55 of the department shall receive a salary increase of one
hundred twenty dollars per year to be effective during
his next five years of service, which increases shall be
successive and cumulative until a total of five such in-
creases shall be received.

In applying the foregoing salary schedule where salary
increases are provided for length of service, members of
the department in service at the time this article becomes
effective shall be given credit for prior service and shall
be paid such salaries as the same length of service will
entitle them to receive under the provisions hereof.

Each member of the department of public safety, ex-
cept the superintendent and civilian employees, shall, be-
fore entering upon the discharge of his duties, execute a
bond with security in the sum of three thousand five hun-
dred dollars payable to the state of West Virginia, con-
ditioned for the faithful performance of his duties as such,
and such bond shall be approved as to form by the attor-
ney general, and as to sufficiency by the board of public
works, and the same shall be filed with the secretary of
state and preserved in his office.

CHAPTER 150
(House Bill No. 125—By Mr. Speaker, Mr. Singleton)

(Passed March 7, 1963; in effect ninety days from passage. Approved by the
Governor.)

AN ACT to amend and reenact section ten, article five, chapter
fifteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the civil de-
fense agency and other organizations for civil defense
within this state, and granting certain immunity and ex-
emption with respect thereto.

Be it enacted by the Legislature of West Virginia:

That section ten, article five, chapter fifteen of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted to read as follows:
Article 5. Civil Defense.

Section 10. Immunity and Exemption.—(a) All functions hereunder and all other activities relating to civil defense are hereby declared to be governmental functions. Neither the state nor any political subdivision thereof nor other agencies of the state or political subdivision thereof, nor, except in cases of willful misconduct, gross negligence, or bad faith, any duly qualified civil defense worker complying with or reasonably attempting to comply with this article, or any order, rule or regulation promulgated pursuant to the provisions of this article, or pursuant to any ordinance relating to black-out or other precautionary measures enacted by any political subdivision of the state, shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this article, or under the workmen's compensation law, or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress.

(b) Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized civil defense worker who shall, in the course of performing his duties as such, practice such professional, mechanical or other skill during a civil defense emergency.

(c) As used in this section the term duly qualified civil defense worker shall be construed to mean and include:

(1) Any duly qualified full or part-time paid, volunteer or auxiliary employee of this state, or other states, territories, possessions or the District of Columbia, of the federal government, or any neighboring county, or of any political subdivision thereof, or of any agency or organization, performing civil defense services at any place in this state subject to the order or control of, or
pursuant to a request of, the state government or any political subdivision thereof;
(2) Duly qualified instructors and properly supervised students in recognized educational programs where civil defense services are taught. A recognized educational program shall be deemed to include programs in educational institutions duly existing under the laws of this state and such other educational programs as shall be established by the civil defense agency or otherwise under this article.
(d) Any civil defense worker, as defined in this section, performing civil defense services at any place in this state pursuant to agreements, compacts or arrangements for mutual aid and assistance, to which the state or a political subdivision thereof is a party, shall possess the same powers, duties, immunities and privileges he would ordinarily possess if performing his duties in the state, province or political subdivision thereof in which normally employed or rendering services.

CHAPTER 151

(Senate Bill No. 270—By Mr. Carrigan and Mr. Martin)

(Passed March 8, 1963; in effect July 1, 1963. Approved by the Governor.)

AN ACT to amend and reenact section two, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to appointment, qualification and disqualification of commissioners; removal from office; terms of office and salaries.

Be it enacted by the Legislature of West Virginia:

That section two, article one, chapter twenty-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. Appointment, qualification and disqualification of commissioners; removal from office; terms of office; salaries.
Section 2. Appointment, Qualification and Disqualification of Commissioners; Removal from Office; Terms of Office; Salaries.—There shall be a public service commission of West Virginia which by that name may sue and be sued. The commission shall consist of three members who shall be appointed by the governor with the advice and consent of the senate. The commissioners shall be citizens and residents of this state and at least one of them shall be a lawyer of not less than ten years' actual experience at the bar. The commissioners in office when this code becomes effective shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified. A commissioner shall be appointed to take office on the first day of June, one thousand nine hundred thirty-one, and on the first day of June of every alternate year thereafter. The term of office shall be six years, except that an appointment to fill a vacancy shall be for the unexpired term only. Each commissioner shall, before entering upon the duties of his office, take and subscribe to the oath provided by section five, article four of the constitution, which oath shall be filed in the office of the secretary of state. The governor shall annually designate one of the commissioners as chairman, and may remove any commissioner for incompetency, neglect of duty, gross immorality or malfeasance in office.

No person while in the employ of, or holding any official relation to, any public utility subject to the provisions of this chapter, or holding any stocks or bonds thereof, or who is pecuniarily interested therein, shall serve as a member of the commission. Nor shall any of such commissioners be a candidate for or hold public office, or be a member of any political committee, while acting as such commissioner; nor shall any commissioner or employee of said commission receive any pass, free transportation or other thing of value, either directly or indirectly, from any public utility subject to the provisions of this chapter. In case any of such commissioners shall become a candidate for any public office or shall become a member of any political committee, his office as commissioner shall be ipso facto vacated.
For the administration of this chapter each commissioner shall receive a salary of ten thousand dollars per annum to be paid in monthly installments from the special fund collected from public utilities under the provisions of section six-a, article three, chapter twenty-four of the code of West Virginia.

CHAPTER 152

(Senate Bill No. 256—By Mr. McCourt)

[Passed March 8, 1963: in effect July 1, 1963. Approved by the Governor.]

AN ACT to amend and reenact section six, article three, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special license fees to be paid by public utilities.

Be it enacted by the Legislature of West Virginia:

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

Article 3. Duties and Privileges of Public Utilities Subject to Regulations of Commission.

Section 6. Special License Fee.—(a) All public utilities subject to the provisions of this chapter shall pay a special license fee in addition to those now required by law. The amount of such fees shall be fixed by the auditor and levied by him upon each of such public utilities according to the value of its property as ascertained by the last assessment, and shall be apportioned among such public utilities upon the basis of such valuation, so as to produce a revenue of one hundred fifty thousand dollars per annum, which fees shall be paid on or before the twentieth day of January in each year. Such sum of one hundred fifty thousand dollars, together with that provided in
subsection (b) hereof shall be paid into the state treasury and kept as a special fund, designated “Public Service Commission Fund,” to be appropriated as provided by law for the purpose of paying the salaries of the commission, as fixed by this chapter, its expenses and salaries, compensations, costs and expenses of its employees.

(b) All public utilities subject to the provisions of this chapter shall pay a special license fee in addition to any and all fees now required by law. The amount of such fees shall be fixed by the auditor and levied by him upon each of such public utilities, in the proportion which the total gross revenue derived from intrastate business done by each of such public utilities in the calendar year next preceding bears to the total gross revenue derived from intrastate business done in such year by all public utilities subject to regulation by the public service commission, so as to produce a revenue of three hundred thousand dollars per annum, in addition to such fees as may be fixed by the auditor under the provisions of subsection (a) hereof and which fees shall be paid on or before the first day of July in each year. Such sum of three hundred thousand dollars shall be paid into the state treasury and be kept, appropriated and used as provided in subsection (a) hereof.

(c) Any balance in said fund at the end of any fiscal year shall not revert to the treasury but shall remain in said fund and may be appropriated and used as provided in subsection (a) hereof.

CHAPTER 153
(House Bill No. 147—By Mr. White)

[Passed March 7, 1963; In effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter thirty-six-a, relating to the
ownership of real property, the division thereof into units, the submission of real property to the provisions of this chapter and the withdrawal of such property from the provisions of this chapter; providing for the improvement, management, operation, assessment and taxation of such property; establishing certain procedures in connection therewith; providing for the conveyancing, leasing and mortgaging thereof; establishing a procedure for the assessment and collection of certain expenses with respect thereto; setting forth certain lien rights with respect thereto; and providing for the recording of certain information.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 36A. CONDOMINIUMS AND UNIT PROPERTY.

Article

2. General Provisions.
4. Declarations, Conveyances, Mortgages and Leases.
5. Recording.
6. Removal of Property from the Provisions of Chapter; Resubmission.
7. Assessments, Taxation and Liens.
8. Miscellaneous.


Section

1. Short title.
2. Definitions.
3. Application of chapter.

Section 1. Short Title.—This chapter shall be known and may be cited as the “Unit Property Act.”

Sec. 2. Definitions.—The following words or phrases as used in this chapter shall have the meanings ascribed to them in this section, unless the context of this chapter clearly indicates otherwise:

(a) “Building” means any multi-unit building or buildings or complex thereof, whether in vertical or horizontal arrangement, as well as other improvements comprising a part of the property and used or intended for use for residential, commercial or industrial purposes or
for any other lawful purpose or for any combination of such uses.

(b) "Code of regulations" means such governing regulations as are adopted pursuant to this chapter for the regulation and management of the property, including such amendments thereof as may be adopted from time to time.

(c) "Common elements" means and includes:

(i) The land on which the building is located and portions of the building which are not included in a unit;

(ii) The foundations, structural parts, supports, main walls, roofs, basements, halls, corridors, lobbies, stairways and entrances and exits of the building;

(iii) The yards, parking areas and driveways;

(iv) Portions of the land and building used exclusively for the management, operation or maintenance of the common elements;

(v) Installations of all central services and utilities;

(vi) All apparatus and installations existing for common use;

(vii) All other elements of the building necessary or convenient to its existence, management, operation, maintenance and safety or normally in common use; and

(viii) Such facilities as are designated in the declaration as common elements.

(d) "Common expenses" means and includes:

(i) Expenses of administration, maintenance, repair and replacement of the common elements;

(ii) Expenses agreed upon as common by all the unit owners; and

(iii) Expenses declared common by provisions of this chapter, or by the declaration or the code of regulations.

(e) "Council" means a board of natural individuals of the number stated in the code of regulations who are residents of this state, who need not be unit owners and who shall manage the business, operation and affairs of the property on behalf of the unit owners and in compliance with and subject to the provisions of this chapter.
(f) "Declaration" means the instrument by which the owner of property submits it to the provisions of this chapter as hereinafter provided, and all amendments thereof.

(g) "Declaration plan" means a survey of the property prepared in accordance with section two, article four, of this chapter.

(h) "Majority" or "majority of the unit owners" means the owners of more than fifty per cent in the aggregate in interest of the undivided ownership of the common elements as specified in the declaration.

(i) "Person" means a natural individual, corporation, partnership, association, trustee or other legal entity.

(j) "Property" means and includes the land, the building, all improvements thereon, all owned in fee simple, and all easements, rights and appurtenances belonging thereto, which have been or are intended to be submitted to the provisions of this chapter.

(k) "Recorded" means that an instrument has been duly entered of record in the office of the clerk of the county court of the county in which the property is situate.

(l) "Clerk" means the clerk of the county court of the county in which the property is situate.

(m) "Revocation" means an instrument signed by all of the unit owners and by all holders of liens against the units by which the property is removed from the provisions of this chapter.

(n) "Unit" means a part of the property designed or intended for any type of independent use, which has a direct exit to a public street or way, or to a common element or common elements leading to a public street or way, or to an easement or right of way leading to a public street or way, and includes the proportionate undivided interest in the common elements which is assigned thereto in the declaration, or any amendments thereof.

(o) "Unit designation" means the number, letter or combination thereof designating a unit in the declaration plan.
Sec. 3. Application of Chapter.—The provisions of this chapter shall be applicable only to real property, the sole owner or all the owners of which submit the same to the provisions hereof by a duly recorded declaration.

Article 2. General Provisions.

Section 1. Status of Units; Ownership.—Each unit, together with its proportionate undivided interest in the common elements, is for all purposes real property and the ownership of each unit, together with its proportionate undivided interest in the common elements, is for all purposes the ownership of real property.

Sec. 2. Common Elements.—The percentage of undivided interest in the common elements assigned to each unit shall be set forth in the declaration and such percentage shall not be altered except by recording an amended declaration duly executed by all of the unit owners affected thereby. The undivided interest in the common elements may not be separated from the unit to which such interest pertains and shall be deemed to be conveyed, leased or encumbered with the unit even though such interest is not expressly referred to or described in the deed, lease, mortgage or other instrument. The common elements shall remain undivided and no owner may exempt himself from liability with respect to the common expenses by waiver of the enjoyment of the right to use any of the common elements or by the abandonment of his unit or otherwise, and no action for partition or division of any part of the common elements shall be permitted, except as provided in section two, article eight of this chapter. Each unit owner or lessee thereof may use the common elements in accordance with the purpose for which they are intended. The maintenance and repair of the common elements and the making
of any additions or improvements thereto shall be carried out only as provided in the code of regulations.

Sec. 3. Invalidity of Contrary Agreements.—Any agreement contrary to the provisions of this chapter shall be void and of no effect.


Sec. 1. Administration governed by code of regulations.—The administration of every property shall be governed by a code of regulations, a true and correct copy of which, and all duly adopted amendments of which, shall be duly recorded.

Sec. 2. Adoption, Amendment or Repeal of Code of Regulations.—The council has authority to make, alter, amend and repeal the code of regulations, subject to the right of a majority of the unit owners to change any such actions.

Sec. 3. Contents of the Code of Regulations.—The code of regulations shall provide for at least the following and may include other lawful provisions:

(a) Identification of the property by reference to the place of record of the declaration and the declaration plan;

(b) The method of calling meetings of unit owners and meetings of the council;

(c) The number of unit owners and the number of members of council which shall constitute a quorum for the transaction of business;

(d) The number and qualification of members of
council, the duration of the term of such members and the method of filling vacancies;

(e) The annual election by the council of a president, secretary and treasurer and any other officers which the code of regulations may specify;

(f) The duties of each officer, the compensation and removal of officers and the method of filling vacancies;

(g) Maintenance, repair and replacement of the common elements and payment of the cost thereof;

(h) The manner of collecting common expenses from unit owners; and

(i) The method of adopting and of amending rules governing the details of the use and operation of the property and the use of the common elements.

Sec. 4. Compliance by Owners with Code of Regulations, Administrative Provisions, etc.—Each unit owner shall comply with the code of regulations and with such rules governing the details of the use and operation of the property and the use of the common elements as may be in effect from time to time, and with the covenants, conditions and restrictions set forth in the declaration or in the deed to his unit or in the declaration plan.

Sec. 5. Remedy for Noncompliance with Code of Regulations, Administrative Provisions, etc.—Failure to comply with the code of regulations and with such rules governing the details of the use and operation of the property and the use of the common elements as may be in effect from time to time and with the covenants, conditions and restrictions set forth in the declaration or in deeds of units or in the declaration plan shall be grounds for an action for the recovery of damages or for injunctive relief, or both, maintainable by any member of the council on behalf of the council or the unit owners or, in a proper case, by an aggrieved unit owner or by any person who holds a mortgage lien upon a unit and is aggrieved by any such noncompliance.

Sec. 6. Duties of Council.—The duties of the council shall include the following:
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(a) The maintenance, repair and replacement of the common elements;
(b) The assessment and collection of funds from unit owners for common expenses and the payment of such common expenses;
(c) The adoption and amendment of the code of regulations and the promulgation, distribution and enforcement of rules governing the details of the use and operation of the property and the use of the common elements, subject to the right of a majority of the unit owners to change any such actions; and
(d) Any other duties which may be set forth in the declaration or code of regulations.

Sec. 7. Powers of Council.—Subject to the limitations and restrictions contained in this chapter, the council shall on behalf of the unit owners:
(a) Have power to manage the business, operation and affairs of the property and for such purposes to engage employees and appoint agents and to define their duties and fix their compensation, enter into contracts and other written instruments or documents and to authorize the execution thereof by officers elected by the council; and
(b) Have such incidental powers as may be appropriate to the performance of their duties.

Sec. 8. Work on Common Elements.—The maintenance, repair and replacement of the common elements and the making of improvements or additions thereto shall be carried on only as provided in the code of regulations.

Sec. 9. Certain Work Prohibited.—No unit owner shall do any work on his unit or the common elements which would jeopardize the soundness or safety of the property or impair any easement or hereditament without the unanimous consent of the unit owners affected thereby.

Sec. 10. Easements for Work.—The council shall have an easement to enter any unit to maintain, repair or replace the common elements, as well as to make repairs
to units if such repairs are reasonably necessary for public safety or to prevent damage to other units or to the common elements.

**Sec. 11. Common Profits and Expenses.**—The common profits of the property shall be distributed among, and the common expenses shall be charged to, the unit owners according to the percentage of the undivided interest of each in the common elements as set forth in the declaration and any amendments thereto.

**Sec. 12. Voting by Unit Owners.**—At any meeting of unit owners, each unit owner shall be entitled to the same number of votes as the percentage of ownership in the common elements assigned to his unit in the declaration and any amendments thereto.

**Sec. 13. Records of Receipts and Expenditures; Examination; Records of Assessments.**—The treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the common elements, specifying and itemizing the maintenance, repair and replacement expenses of the common elements and any other expenses incurred. Such records shall be available for examination by the unit owners during regular business hours. In accordance with the actions of the council assessing common expenses against the units and unit owners, he shall keep an accurate record of such assessments and of the payment thereof by each unit owner.

**Article 4. Declarations, Conveyances, Mortgages and Leases.**

**Section 1. Contents of Declaration.**—The declaration shall contain the following:

1. A reference to this chapter and an expression of the intention to submit the property to the provisions of this chapter;
2. A description of the land and building;
(c) The name by which the property will be known;
(d) A statement that the property is to consist of units and common elements as shown in a declaration plan;
(e) A description of the common elements and the proportionate undivided interest, expressed as a percentage, assigned to each unit therein, which percentages shall aggregate one hundred per cent;
(f) A statement that the proportionate undivided interest in the common elements may be altered by the recording of an amendment duly executed by all unit owners affected thereby;
(g) A statement of the purposes or uses for which each unit is intended and restrictions, if any, as to use;
(h) The names of the first members of council;
(i) Any further details in connection with the property which the party or parties executing the declaration may deem appropriate.

Sec. 2. Declaration Plan.—The declaration plan shall bear the verified statement of a registered architect or licensed professional engineer certifying that the declaration plan fully and accurately (i) shows the property, the location of the building thereon, the building and the layout of the floors of the building, including the units and the common elements and (ii) sets forth the name by which the property will be known, and the unit designation for each unit therein.

Sec. 3. Contents of Deeds of Units.—Deeds of units shall include the following:
(a) The name by which the property is identified in the declaration plan and the name of the political subdivision and the ward, if any, and the name of the county in which the building is situate, together with a reference to the declaration and the declaration plan, including reference to the place where both instruments and any amendments thereof are recorded;
(b) The unit designation of the unit in the declaration plan and any other data necessary for its proper identification;
(c) A reference to the last unit deed if the unit was previously conveyed;
(d) The proportionate undivided interest, expressed as a percentage, in the common elements which is assigned to the unit in the declaration and any amendments thereof;
(e) In addition to the foregoing, the first deed conveying each unit shall contain the following specific provision:

"The grantee, for and on behalf of the grantee and the grantee's heirs, personal representatives, successors and assigns, by the acceptance of this deed covenants and agrees to pay such charges for the maintenance of, repairs to, replacement of and expenses in connection with the common elements as may be assessed from time to time by the council in accordance with the Unit Property Act of West Virginia, and further covenants and agrees that the unit conveyed by this deed shall be subject to a charge for all amounts so assessed and that, except insofar as section five, article seven of said Unit Property Act may relieve a subsequent unit owner of liability for prior unpaid assessments, this covenant shall run with and bind the land or unit hereby conveyed and all subsequent owners thereof"; and
(f) Any further details which the grantor and grantee may deem appropriate.

Sec. 4. Mortgages and Other Liens of Record Affecting Property at Time of the First Conveyance of Each Unit.—At the time of the first conveyance of each unit following the recording of the original declaration, every mortgage and other lien of record affecting the entire building or property or a greater portion thereof than the unit being conveyed shall be paid and satisfied of record, or the unit being conveyed shall be released therefrom by partial release duly recorded.

Sec. 5. Sales, Conveyances or Leases of or Liens upon Separate Units.—Units may be sold, conveyed, mortgaged, leased or otherwise dealt with in the same manner as like dealings are conducted with respect to real property
and interests therein. Every written instrument dealing with a unit shall specifically set forth the name by which the property is identified and the unit designation identifying the unit involved.

Article 5. Recording.

Section
1. Instruments recordable.
2. Recording a prerequisite to effectiveness of certain instruments.
3. Place of recording.
4. Indexing by recording officer.
5. Recording fees.

Section 1. Instruments Recordable.—All instruments relating to the property or any unit, including the instruments provided for in this chapter, shall be entitled to be recorded, provided that they are acknowledged or proved in the manner provided by law.

Sec. 2. Recording a Prerequisite to Effectiveness of Certain Instruments.—No declaration, declaration plan or code of regulations, or any amendments thereto, shall be effective until the same have been duly recorded.

Sec. 3. Place of Recording.—The clerk shall record declarations, deeds of units, codes of regulations, and revocations in the same records as are maintained for the recording of deeds of real property. Mortgages relating to units shall be recorded in the same records as are maintained by the clerk for the recording of real estate mortgages. Declaration plans, and any and all amendments thereto, shall be recorded in the same records as are maintained for the recording of subdivision plans.

Sec. 4. Indexing by Recording Officer.—The clerk shall index each declaration against the maker thereof as the grantor and the name by which the property is identified therein as the grantee. The clerk shall index each declaration plan and code of regulations and any revocation in the name by which the property is identified therein in both the grantor index and the grantee index. The clerk shall index each unit deed and mortgage and lease covering a unit in the same manner as like instruments are indexed.

Sec. 5. Recording Fees.—The clerk shall be entitled
Article 6. Removal of Property from the Provisions of Chapter; Resubmission.

Section 1. Removal.—Property may be removed from the provisions of this chapter by a revocation expressing the intention to so remove property previously made subject to the provisions of this chapter. No such revocation shall be effective unless the same is executed by all of the unit owners and by the holders of all mortgages, judgments or other liens affecting the units and is duly recorded.

Sec. 2. Effect of Removal.—When property subject to the provisions of this chapter has been removed as provided in section one of this article, the former unit owners shall, at the time such removal becomes effective, become tenants in common of the property. The undivided interest in the property owned in common which shall appertain to each unit owner at the time of removal shall be the percentage of undivided interest previously owned by such person in the common elements.

Sec. 3. Resubmission.—The removal of property from the provisions of this chapter shall not preclude such property from being resubmitted to the provisions of the chapter in the manner herein provided.

Article 7. Assessments, Taxation and Liens.

Section 1. Assessments and Taxes.—Each unit and its proportionate undivided interest in the common elements as determined by the declaration and any amendments
thereof shall be assessed and taxed for all purposes as a separate parcel of real estate entirely independent of the building or property of which the unit is a part. Neither the building, the property nor any of the common elements shall be assessed or taxed separately after the declaration and declaration plan are recorded, nor shall the same be subject to assessment or taxation, except as the units and their proportionate undivided interests in the common elements are assessed and taxed pursuant to the provisions of this section.

Sec. 2. Assessment of Charges.—All sums assessed by resolutions duly adopted by the council against any unit for the share of common expenses chargeable to that unit shall constitute the personal liability of the owner of the unit so assessed and shall, until fully paid, together with interest thereon at the rate of six per cent per annum from the thirtieth day following the adoption of such resolutions, constitute a charge against such unit which shall be enforceable as provided in section three of this article.

Sec. 3. Method of Enforcing Charges.—Any charge assessed against a unit may be enforced by a civil action by the council acting on behalf of the unit owners, provided that each suit when filed shall refer to this chapter and to the unit against which the assessment is made and the owner thereof and shall be indexed by the clerk of the county court of the county in which the unit is situate as lis pendens. Any judgment against a unit and its owner shall be enforceable in the same manner as is otherwise provided by law.

Sec. 4. Mechanics' Liens Against Units.—Any mechanics' liens arising as a result of repairs to or improvements of a unit by a unit owner shall be liens only against such unit. Any mechanics' liens arising as a result of repairs to or improvements of the common elements, if authorized in writing pursuant to a duly adopted resolution of the council, shall be paid by the council as a common expense and until so paid shall be liens against each unit in a percentage equal to the proportionate share of the common elements relating to such unit.
Sec. 5. Unpaid Assessments at Time of Voluntary Sale of a Unit.—Upon the voluntary sale or conveyance of a unit, the purchaser shall be jointly and severally liable with the seller for all unpaid assessments for common expenses which are a charge against the unit as of the date of the sale or conveyance, but such joint and several liability shall be without prejudice to the purchaser’s right to recover from the seller the amount of any such unpaid assessments which the purchaser may pay, and until any such assessments are paid, they shall continue to be a charge against the unit which may be enforced in the manner set forth in section three of this article: Provided, however, That any person who shall have entered into a written agreement to purchase a unit shall be entitled to obtain a written statement from the treasurer setting forth the amount of unpaid assessments charged against the unit and its owners, and if such statement does not reveal the full amount of the unpaid assessments as of the date it is rendered, neither the purchaser nor the unit shall be liable for the payment of an amount in excess of the unpaid assessments shown thereon. Any such excess which cannot be promptly collected from the former unit owner may be reassessed by the council as a common expense to be collected from all of the unit owners, including the purchaser, his successors and assigns.

Article 8. Miscellaneous.

Section 1. Insurance.—The council shall, if required by the declaration, the code of regulations or by a majority of the unit owners, insure the building against loss or damage by fire and such other hazards as shall be required or requested, without prejudice to the right of each unit owner to insure his own unit for his own benefit. The premiums for such insurance on the building shall be deemed common expenses.

Sec. 2. Repair or Reconstruction.—Except as herein-after provided, damage to or destruction of the building or of one or more of several buildings which comprise
the property shall be promptly repaired and restored by
the council using the proceeds of insurance held by the
council, if any, for that purpose, and the unit owners
directly affected thereby shall be liable for assessment
for any deficiency in proportion to their respective un-
divided ownership of the common elements: Provided,
however, That if there is substantially total destruction
of the building or of one or more of several buildings
which comprise the property, or if seventy-five per cent
of the unit owners directly affected thereby duly resolve
not to proceed with repair or restoration, then, and in
that event, the salvage value of the property or of the
substantially destroyed building or buildings shall be
subject to partition at the suit of any unit owner directly
affected thereby, in which event the net proceeds of sale,
together with the net proceeds of insurance policies held
by the council, if any, shall be considered as one fund
and shall be divided among all the unit owners directly
affected thereby in proportion to their respective un-
divided ownership of the common elements, after dis-
charging, out of the respective shares of unit owners
directly affected thereby, to the extent sufficient for the
purpose, all liens against the units of such unit owners.

Sec. 3. Severability.—If any provision of this chapter,
or any section, sentence, clause, phrase or word, or the
application thereof in any circumstance is held invalid,
the validity of the remainder of the chapter and of the
application of any such provision, section, sentence,
clause, phrase or word in any other circumstances, shall
not be affected thereby.

CHAPTER 154
(Senate Bill No. 302—By Mr. Davis and Mr. Carrigan)

[Passed March 8, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-seven of the code of West
Virginia, one thousand nine hundred thirty-one, as amend-
ed, by adding thereto a new article, designated article thir-
Be it enacted by the Legislature of West Virginia:

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


Section 1. Jurisdiction to permit and order removal, etc.

2 The circuit court of any county shall have jurisdiction and authority to permit and order the removal, transfer and reinterment, or other disposition, of remains in any graves located upon privately-owned land within the boundaries of such county under the provisions hereinafter set forth: Provided, That the provisions of this article shall not apply to any grave or grave area where title or color of title to the same exists as a matter of public record in any person or persons not a plaintiff or plaintiffs instituting an action pursuant to this article: Provided, however, That when title or color of title of public record to such grave or grave area exists in such plaintiff or plaintiffs, the provisions of this article may be available in addition to any other rights or remedies provided by law for the removal, transfer and disposition of remains in graves or grave areas.

Sec. 2. Action; Contents of Petition.—Any owner of private lands, may, as plaintiff, institute an action for the purposes set forth in section one of this article by filing a petition before the circuit court of the county in which the lands affected are located. Such petition shall show the title to such lands, the condition of the graves in question, the interests of all persons in such lands and in the remains in such graves, so far as known, the reasons...
why removal is sought, and the proposed disposition of
such remains. The petition shall further show that plain-
tiffs have made reasonable and diligent effort to ascertain
the identity of each deceased and each deceased’s sur-
viving next-of-kin, heirs-at-law, administrator, executor
or personal representative. The court may, if deemed
necessary, appoint a guardian ad litem to protect the
interests of known or unknown persons in interest,
whether living or dead.

Sec. 3. Parties; Notice.—All owners, lessees and other
persons having an interest in such lands, other than plain-
tiffs, and also the surviving next-of-kin, heirs-at-law, ad-
ministrator, executor or personal representative of each
decdeed, so far as can be determined through reasonable
and diligent effort, shall be made defendants in such ac-
tion. Insofar as possible all defendants shall be served
with notice of the institution of the action and the date of
the first hearing upon the same, such service to be made
in the same manner provided by law for the service of
process in other civil actions. If the address of any de-
fendant be unknown, or, if there be any unknown next-
of-kin, heirs-at-law, administrator, executor or personal
representative of any known or unknown person whose
remains may be interred within any such grave, then, in
such event, a copy of said notice shall be published once
a week for three consecutive weeks in a newspaper of
general circulation in the county prior to the hearing
upon the same.

Sec. 4. Hearing; Discretion in Granting or Refusing Re-
lief; Order.—No sooner than three weeks from the filing
of such petition the court shall take evidence upon relief
sought, together with any evidence presented in opposi-
tion thereto. In granting or denying such relief the court
shall consider, as well as other evidence adduced, evi-
dence as to the wishes of all persons concerned, whether
living or deceased, and shall exercise a sound discretion
in granting or refusing, in whole or in part, the relief
sought. If the court is satisfied with the propriety of the
relief sought by plaintiffs it shall enter an order granting
the same, either in whole or in part.
Sec. 5. Procedure upon Removal.—Such order permitting removal, transfer and disposition of remains in any grave shall provide that the same shall be done with care, decency and reverence for the remains of the deceased, may require that the services of a licensed funeral director shall be utilized and may be upon any other terms and conditions as the court may deem fit and proper, including the method and manner of disposition of such remains.

Sec. 6. Costs.—In the event that the plaintiff or plaintiffs shall be granted the relief sought, then all costs of such action shall be borne by plaintiffs. In the event that such relief is not granted, or is granted only in part, then such costs may be allocated between the parties as the court shall deem equitable and just. In any event wherein any relief is granted, the costs of removal, transfer and disposition shall be borne by the plaintiffs, including the cost of erecting appropriate memorials to the deceased as the same may be ordered by the court.

Sec. 7. Remedy Herein Provided Cumulative.—This article and the rights and remedies herein provided for shall be cumulative and in addition to other existing rights. The right of eminent domain and the remedy of condemnation of lands shall not be affected hereby. This article shall not apply to burial grounds governed by the provisions of article five, chapter thirty-five of this code.

CHAPTER 155

(House Bill No. 426—By Mr. White)

[Passed March 9, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four-a, article one, chapter thirty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to acknowledgment of persons in the military service of the United States of America.
Be it enacted by the Legislature of West Virginia:

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

**Article 1. Authentication and Record of Writings.**

Section 4-a. Acknowledgment of persons in the military service of the United States of America; who may take same, and form thereof.

Section 4-a. Acknowledgment of Persons in the Military Service of the United States of America; Who May Take Same, and Form Thereof.—Upon the request of any person interested therein, the clerk of the county court of any county in which any deed, contract, power of attorney, or other writing is to be, or may be, recorded, shall admit the same to record as to any person whose name is signed thereto who is in the military service of the United States (including the Women’s Army Auxiliary Corps, Women’s Appointed Volunteers for Emergency Service, Army Nurse Corps, “Spars,” Women’s Reserve, or similar women’s auxiliary unit officially connected with the military service of the United States) or who is the spouse of anyone in the military service of the United States (including the aforesaid components and auxiliary units officially connected therewith), upon the certificate of acknowledgment of such person before any commissioned officer of any branch of the military service of the United States, or auxiliary unit officially connected with such military service. Such acknowledgment may be taken at any place either within or outside of the United States of America, or any territory, possession or dependency thereof. The certificate of such acknowledgment need not state the place where same is taken and shall require no seal to be affixed thereto. The officer certifying such acknowledgment must state his rank, branch of military service, and identification number; and such certificate of acknowledgment may be in form and effect as follows:

IN THE MILITARY SERVICE OF THE UNITED STATES:

I, ........................................, a commissioned officer in the military service of the United States, do certify that ........................................, who is a member of the military
service of the United States (or of ........................................ ,
and/or ........................................, husband (or wife) of
member of the military service
of the United States (or of ........................................, an
auxiliary to the military forces of the United States),
whose name(s) is (are) signed to the foregoing writing
bearing date on the ........................................ day of
19........, has (have) this day acknowledged the same before me; and I further certify
that I am a ........................................,
(state rank)
in the ........................................ of the United States and
my identification number is .........................................
Given under my hand this ........................................ day of
19..,
(Signature of Officer)
(Official Title)

CHAPTER 156
(House Bill No. 484—By Mr. Ford and Mr. Buch)

[Passed March 9, 1963; in effect July 1, 1964. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article one, chapter thirty-nine, and sections two and ten, article one, chapter fifty-nine, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the recordation of writings, the index with respect thereto, the filing and removal of financing, continuation and termination statements and other statements and writings permitted to be filed under the uniform commercial code, the index with respect thereto, the fees to be charged by the secretary of state for certain services and the fees to be charged by the clerk of the county court for certain services.
Be it enacted by the Legislature of West Virginia:

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

Chapter
39. RECORDS AND PAPERS.
59. FEES, ALLOWANCES AND COSTS.

CHAPTER 39. RECORDS AND PAPERS.

Article 1. Authentication and Record of Writings.

Section 11. Recordation of writings and plats and papers annexed; index; interlineations; filing under uniform commercial code.

Section 11. Recordation of Writings and Plats and Papers Annexed; Index; Interlineations; Filing Under Uniform Commercial Code.—Every writing (except financing, continuation and termination statements and other statements and writings permitted to be filed under chapter forty-six of the code) authorized by law to be recorded, when admitted to record, shall, with all certificates of acknowledgment, and all plats, schedules and other papers thereto annexed or thereon indorsed, be recorded by, or under the direction of, the clerk of the county court, in a well-bound book, to be carefully preserved; and there shall be an index to such book as well in the name of the grantee as of the grantor. After being so recorded, such writing may be delivered to the party entitled to claim under the same. If, except in those cases where such writing is recorded by photography or similar process producing exact facsimile copies, there appear upon such writing, or any paper or certificate annexed thereto, any interlineation, erasure or alteration, of which no memorandum is contained in the writing, paper or certificate, the clerk shall append to the record thereof a memorandum describing as accurately as may be such interlineation, erasure or alteration; and such memorandum shall be copied into every such writing, paper or certificate. Every such memorandum shall be prima facie evidence of what is therein stated: Provided, That the clerk of the county court may refuse to accept
for recordation any instrument printed on both sides of
the paper or printed in whole or part in smaller than ten
point type with at least two points separating each line.
Any failure of such instrument to be so accepted by the
clerk of the county court shall not affect the validity
thereof as to the parties thereto: Provided, however,
That any such instrument shall be accepted by the clerk
for recording at one and one-half times the legal fee
therefor.

Financing, continuation and termination statements and
other statements and writings permitted to be filed under
chapter forty-six of the code shall be filed in a proper file
by the clerk of the county court or the secretary of state,
as the case may be, as specified in said chapter forty-six.
Such statements and writings filed in the office of the
clerk of the county court and such statements and writ-
ings filed in the office of the secretary of state shall be
indexed according to the name of the debtor and shall
disclose the assigned file number and the address of the
debtor given in the respective statement or writing. The
date and hour of filing and the file number shall be noted
on the statement or writing involved. A financing, con-
tinuation or termination statement or other statement or
writing permitted to be filed under chapter forty-six of
the code may, after the same ceases to be effective or
lapses, as specified in said chapter forty-six, be removed
from the files in the office of the clerk of the county court
or the secretary of state, as the case may be, and de-
stroyed.

CHAPTER 59. FEES, ALLOWANCES AND COSTS.

Article 1. Fees and Allowances.

Section 2. Fees to be charged by secretary of state.
10. Fees to be charged by clerk of county court.

Section 2. Fees to Be Charged by Secretary of State.—
2 The secretary of state shall charge for services rendered
in his office the following fees to be paid by the person
to whom the service is rendered at the same time it is
done:

6 For each certificate of incorporation or copy
thereof, including certificates issued on new agree-
ments, or authorizing a foreign corporation to do
business within this state ........................................ $10.00

For each certified copy of certificate of incor-
poration, not to exceed ten pages ......................... 10.00

If such copy contains in excess of ten pages, for
each additional page ........................................... .20

For filing and recording a trade-mark ..................... 5.00

For each certificate of change of name, of in-
crease or decrease of authorized capital stock, of
change of principal office, or of amendment to cer-
tificate of incorporation .................................... 5.00

For recording a power of attorney and certificate
terof ................................................................. 3.00

For any other certificate, whether required by
law or made at the request of any person ................ 5.00

The foregoing fees shall include the tax on the
great seal or the less seal impressed on any such
document, as well as the filing, recording and in-
dexing of the same.

For indorsing and filing reports of corporations,
and all other papers, which shall include the in-
dexing of the same, for each report or paper filed
For any search, not less than ................................. 1.00
For searches of more than one hour, for each
hour or fraction thereof consumed in making such
search ............................................................... 1.00

The cost of the search shall be in addition to the
cost of any certificate issued pursuant thereto or
based thereon.

For entering statement of satisfaction of condi-
tional sale contract ............................................... 1.00

For filing each financing, continuation or termi-
permitted to be filed under chapter forty-six of the
code .................................................................. 1.00

For recording any paper for which no specific
fee is prescribed .................................................. 1.00
Or at the rate, for each one hundred words recorded, of ................................................................. .20
For issuing commission to a notary public, or to a commissioner of deeds, which shall include the tax on the state seal thereon and other charges .......... 5.00
For a testimonial ................................................................. 1.50
For a copy of any paper, if one sheet ......................... 1.00
For each sheet of copy after the first ............. .75
For issuing a commission to a commissioner in any other state ................................................................. 5.00
For making out a requisition for a fugitive from justice demanded of the executive authority of another state ................................................................. 2.00
For issuing a warrant for the arrest of a fugitive from justice demanded by the executive authority of another state ................................................................. 2.00
When the work or service is performed for the benefit of any corporation which is exempted from the payment of license tax on its charter, one half only of the foregoing rates shall be charged.
For any other work or service not herein enumerated, such fee as may be elsewhere prescribed.

Sec. 10. Fees to Be Charged by Clerk of County Court.—For the purpose of this section, the word “page” is defined as being a paper writing of not more than legal size, 8½” x 13”.

The clerk of the county court shall charge and collect the following fees:
When a writing is admitted to record, for receiving proof of acknowledgment thereof, entering an order in connection therewith, endorsing clerk’s certificate of recordation thereon and indexing in a proper index, where the writing is a deed of conveyance, trust deed, lease, or power of attorney concerning real estate ................................................................. $1.25
If such writing contains more than two pages, for each additional page, in counties where recording is done by photograph, fifty cents; and in counties where recording is done by typewriter, and
such writing contains more than one thousand words, three cents for each additional twenty words.

For recording a plat accompanying a deed or other writing ........................................ 1.00

If such plat contains more than one hundred twenty square inches, for each additional square inch ................................................................. .007

For recording and indexing a map to be placed in map book ....................................... 2.00

If such map contains more than one hundred twenty square inches, for each additional square inch ................................................................. .007

For recording and indexing assignment .................................................. 1.25

If such assignment contains more than one reference to the record of property assigned, for each reference ............................................................. .50

If such assignment does not give the reference to the record of property assigned, for search of record to determine such book and page ......................... .25

If such assignment contains more than two pages, for each additional page ...................... .50

For recording and indexing and noting release of lien .................................................. 1.00

If such release contains more than one reference to lien released, for each lien released thereby .... 1.00

If book and page reference to lien released is omitted, for search of record to determine such book and page ................................................................. .25

For filing or refileing and entering conditional sales contract ....................................... 1.00

For recording and indexing a satisfaction of a conditional sales contract ......................... 1.00

For filing each financing, continuation or termination statement or other statement or writing permitted to be filed under chapter forty-six of the code ................................................................. 1.00

For recording and indexing a certificate of incorporation ............................................... 1.25
If such certificate contains more than two pages, for each additional page ...........................................  .50

For filing and indexing a certificate showing the name or names of a person or persons conducting business under an assumed name ........................................... 1.00

For certifying to the assessor a transfer of real estate under section eight, article four, chapter eleven of the code .................................................................  .50

For swearing the witnesses and entering in the order or minute book, all orders in relation to the proof of a will which is admitted to record without contest, and copying such order on the will or on a paper annexed thereto, when fully proved and but one order ................................................................. 2.00

If the will be but partially proved on one day, for the order and entering the same on the will or paper annexed thereto ...........................................  .50

For each subsequent order and entering the same on the will or paper annexed thereto ...........................................  .50

For the same services where there is a contest ................................................................. 5.00

For preparing notices in connection with contest, or any hearing, each notice ...........................................  .50

For recording a will and the matter recorded therewith in the will book ................................................................. 1.00

If will and matter recorded therewith contains more than two pages, for each additional page .................................................................  .50

For entering orders and transmitting papers in case of appeal ................................................................. 2.50

If such order and transmittal contains more than five pages, for each additional page ...........................................  .50

If any personal representative or guardian qualify for administering necessary oaths, notating the bond, entering and copying on the will, order granting probate or administration, making out copy of such order for personal representative or guardian, entering and copying orders of appraisement ................................................................. 1.50

For each additional copy of qualification order .................................................................  .50

If several personal representatives qualify on
the same estate at the same time or term the same
fee shall be charged as if one had qualified, to-wit
For entering and copying an order granting a
license under provisions of article twelve, chapter
eleven of the code ............................................ .50
For certificate for a license or endorsing assign-
ment thereof ...................................................... .50
For issuance of marriage license, for preparing the
application and administering the oath, for regis-
tering and recording the license, for mailing ac-
knowledgment of minister’s return to one of li-
censees, for notifying one of licensees after sixty
days of the non-receipt of the minister’s return .... 2.00
One half of the latter fee shall be paid by the
county clerk into the state treasury as a state reg-
istration fee, in the same manner that license taxes
are paid into the treasury under article twelve,
chapter eleven of the code.
For search of anything in his office of over a year’s
standing, unless otherwise required by statute ..... .25
For recording certificates and posting a copy
thereof under the provisions of section two, article
one, chapter thirty-four of the code ..................... 1.25
For docketing or redocketing under article three,
chapter thirty-eight of the code, a judgment, de-
cree, bond or recognizance .................................. .50
If such writing contains more than one page, for
each additional page ........................................... .50
For recording and indexing an execution and not-
ing the date of issuance and the date of filing of
same upon the judgment record ........................... 1.00
For making out a transcript of the record and
proceedings in any case in due form so that the
same may be used in appellate court, such fee shall
be the same as specified herein for recording.
For making out, in any other manner than copy-
ing, any paper to go out of the office which is not
otherwise provided for ------------------------------- 1.00
<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>132</td>
<td>If such paper contains more than two pages, for each additional page</td>
<td>$0.50</td>
</tr>
<tr>
<td>134</td>
<td>For any copy, if it be not otherwise provided for</td>
<td>$1.00</td>
</tr>
<tr>
<td>135</td>
<td>If such copy contains more than two pages, for each additional page</td>
<td>$0.50</td>
</tr>
<tr>
<td>137</td>
<td>For annexing the seal of the court to any paper, writing certificates of clerk accompanying it</td>
<td>$0.50</td>
</tr>
<tr>
<td>139</td>
<td>For writing a certificate of the president of the court or judge, when the clerk be required to do so</td>
<td>$0.50</td>
</tr>
<tr>
<td>141</td>
<td>For recording and indexing an inventory or sale bill</td>
<td>$1.00</td>
</tr>
<tr>
<td>143</td>
<td>If such writing contains more than two pages, for each additional page</td>
<td>$0.50</td>
</tr>
<tr>
<td>145</td>
<td>For entering an order confirming the report of a fiduciary</td>
<td>$0.50</td>
</tr>
<tr>
<td>147</td>
<td>For recording and indexing such report and matter recorded therewith</td>
<td>$2.00</td>
</tr>
<tr>
<td>149</td>
<td>If such report contains more than four pages, for each additional page</td>
<td>$0.50</td>
</tr>
<tr>
<td>151</td>
<td>For recording and indexing any bond required by law to be recorded, including the certificate or other evidence of its execution</td>
<td>$1.00</td>
</tr>
<tr>
<td>154</td>
<td>If such bond and certificate contains more than two pages, for each additional page</td>
<td>$0.50</td>
</tr>
<tr>
<td>156</td>
<td>For recording and indexing a notice of mechanic’s lien</td>
<td>$1.00</td>
</tr>
<tr>
<td>158</td>
<td>If such notice contains more than two pages, for each additional page</td>
<td>$0.50</td>
</tr>
<tr>
<td>160</td>
<td>For recording contract limiting liability of owner and bond of contractor to be filed therewith, as prescribed in article two, chapter thirty-eight of the code</td>
<td>$1.25</td>
</tr>
<tr>
<td>164</td>
<td>If such contract and bond contains more than two pages, for each additional page</td>
<td>$0.50</td>
</tr>
<tr>
<td>166</td>
<td>For recording and indexing a notice of lis pendens</td>
<td>$1.25</td>
</tr>
<tr>
<td>168</td>
<td>If such notice contains more than two pages, for each additional page</td>
<td>$0.50</td>
</tr>
</tbody>
</table>
For recording a certificate of real estate claimed as a homestead ................................................................. .50
For administering an oath not herein provided for, and writing a certificate thereof where the case requires one ................................................................. .50
For recording a writing containing pages in excess of legal size, 8½" x 13", additional fee for each page, where recording is by photograph ........................................... .25
For recording and indexing instruments not specifically provided for herein ......................................................... 1.25
If such instrument contains more than two pages, for each additional page ................................................................. .50
For recording anew any will, deed or other paper, the same fees herein provided for the original recording.
For any service other than recording and indexing not specifically provided for, the same fee as a clerk of the circuit court for similar services.
All acts or parts of acts in conflict herewith are hereby repealed.

CHAPTER 157
(Senate Bill No. 227—By Mr. Carson, Mr. President)

[Passed March 1, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend article nine, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to the department of commerce; and authorizing such department to promote, undertake, participate in and otherwise assist efforts and programs designed to develop recreational facilities throughout the state.

Be it enacted by the Legislature of West Virginia:
That article nine, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be
amended by adding thereunto a new section, designated section three-a, to read as follows:

**Article 9. Department of Commerce.**

Section 3-a. Authority and duties as to recreational facilities; planning; coordinating.

Section 3-a. Authority and Duties as to Recreational Facilities; Planning; Coordinating.—The department of commerce shall have the authority and, within the limits of available funds, it shall be its duty to:

1. Investigate, study and undertake ways and means of promoting and encouraging the development of recreational facilities on the local, county, regional and state level.

2. Publish information as an aid for the development of recreational facilities on the local, county, regional or state level, and to initiate, promote and conduct, or cause to be conducted, research designed to develop new and existing recreational facilities on the local, county, regional or state level.

3. Enter into agreements with federal and state departments or agencies, including those of other states, and any other groups which are in harmony with the purposes of this article, as well as with counties or municipalities of this state, for the rendering of consultative service with respect to the planning and establishment of recreational facilities in counties or municipalities of this state.

The agreement shall provide that the county or municipality may pay part or all the expense of such services, except that no part of the cost of the acquisition of land, buildings, equipment or other property, real or personal, necessary for the development, expansion or completion of a recreational facility shall be paid out of any moneys of the treasury of the state of West Virginia.

The department of commerce is hereby expressly authorized to participate in any federal program which will promote and encourage the proper and orderly development of recreational facilities on the local, county, regional or state level in West Virginia.
AN ACT to repeal article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article two of said chapter, relating to the division of the state into senatorial districts, apportionment of the membership of the house of delegates, and congressional districts.

Be it enacted by the Legislature of West Virginia:

That article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that a new article two of said chapter be enacted in lieu thereof, to read as follows:

Article 2. Apportionment of Representation.

Section

1. Senatorial districts.
2. Apportionment of membership of house of delegates.
3. Congressional districts.

Section 1. Senatorial Districts.—The state shall consist of seventeen senatorial districts as follows:

1. The counties of Brooke, Hancock and Ohio shall constitute the first senatorial district;
2. The counties of Doddridge, Marshall, Tyler and Wetzel shall constitute the second senatorial district;
3. The counties of Calhoun, Pleasants, Ritchie, Wirt and Wood shall constitute the third senatorial district;
4. The counties of Clay, Jackson, Mason, Putnam and Roane shall constitute the fourth senatorial district;
5. The counties of Cabell and Wayne shall constitute the fifth senatorial district;
6. The counties of McDowell and Mingo shall constitute the sixth senatorial district;
The counties of Boone, Lincoln and Logan shall constitute the seventh senatorial district;
The county of Kanawha shall constitute the eighth senatorial district;
The counties of Raleigh and Wyoming shall constitute the ninth senatorial district;
The counties of Mercer, Monroe and Summers shall constitute the tenth senatorial district;
The counties of Fayette and Greenbrier shall constitute the eleventh senatorial district;
The counties of Braxton, Nicholas, Pendleton, Pocahontas, Randolph and Webster shall constitute the twelfth senatorial district;
The counties of Gilmer, Harrison and Lewis shall constitute the thirteenth senatorial district;
The counties of Marion and Monongalia shall constitute the fourteenth senatorial district;
The counties of Barbour, Grant, Preston, Taylor, Tucker and Upshur shall constitute the fifteenth senatorial district;
The counties of Berkeley, Hampshire, Hardy, Jefferson, Mineral and Morgan shall constitute the sixteenth senatorial district; and
The county of Kanawha shall constitute the seventeenth senatorial district.

Each of the said districts shall have two senators, and, regardless of the changes in district lines made by this act, the senators elected at the general election of one thousand nine hundred sixty and at the general election of one thousand nine hundred sixty-two shall continue to hold their seats as members of the senate for the term, and as representatives of the senatorial districts, for which each thereof, respectively, was elected.

One senator shall be nominated and elected at the general election of one thousand nine hundred sixty-four from each of the senatorial districts hereinabove described for a term of four years, and one shall be nominated and elected from each of the said senatorial districts biennially.
thereafter for a term of four years: Provided, That at the general election to be held in the year one thousand nine hundred sixty-four there shall be two senators elected in the seventeenth senatorial district, as herein designated, one of whom shall be nominated and elected for a term of two years and one of whom shall be nominated and elected for a term of four years, and biennially thereafter one senator shall be elected in said seventeenth senatorial district for a term of four years.

Sec. 2. Apportionment of Membership of House of Delegates.—The house of delegates shall consist of one hundred six members, who shall be apportioned as follows:

The counties of Barbour, Boone, Braxton, Brooke, Calhoun, Clay, Doddridge, Gilmer, Grant, Hampshire, Hardy, Jackson, Jefferson, Lewis, Lincoln, Mason, Mineral, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Putnam, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel and Wirt shall have one delegate each;

The counties of Berkeley, Greenbrier, Hancock, Marshall, Mingo, Wayne and Wyoming shall have two delegates each;

The counties of Fayette, Logan, Marion and Monongalia shall have three delegates each;

The counties of Harrison, McDowell, Mercer, Ohio, Raleigh and Wood shall have four delegates each;

The county of Cabell shall have six delegates; and

The county of Kanawha shall have fourteen delegates.

Sec. 3. Congressional Districts.—The number of members to which the state is entitled in the house of representatives of the Congress of the United States shall be apportioned among the several counties of the state, arranged into five congressional districts, numbered as follows, that is to say:

First District: Braxton, Brooke, Calhoun, Doddridge, Gilmer, Hancock, Harrison, Lewis, Marion, Marshall, Ohio, Taylor and Wetzel.

Second District: Barbour, Berkeley, Grant, Green-
AN ACT to repeal section forty-eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, fourteen, seventeen, twenty, twenty-one, twenty-two, twenty-five, twenty-seven, thirty, thirty-one and thirty-three of said article ten; and to further amend said article ten by adding thereto three new sections, designated sections forty-eight, forty-nine and fifty, all relating to a contributing retirement system for persons in the employ of the state and affiliated political subdivisions of the state.

Be it enacted by the Legislature of West Virginia:

That section forty-eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections two, fourteen, seventeen, twenty, twenty-one, twenty-two, twenty-five, twenty-seven, thirty, thirty-one and thirty-three of said article ten be amended and reenacted; and that said article ten be further amended by adding thereto three new sections, designated sections forty-eight, forty-nine and fifty, to read as follows:
Article 10. West Virginia Public Employees Retirement Act.

Section 2. Definitions.—The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, shall have the following meanings:

(1) "State" means the state of West Virginia;

(2) "Retirement system" or "system" means the West Virginia public employees retirement system created and established by this article;

(3) "Board of trustees" or "board" means the board of trustees of the West Virginia public employees retirement system;

(4) "Political subdivision" means the state of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns;

(5) "Participating public employer" means the state of West Virginia, any board, commission, department, institution or spending unit, and shall include any agency created by rule of the supreme court of appeals having full-time employees, which for the purposes of this article shall be deemed a department of state government; and any political subdivision in the state which has elected to
cover its employees, as defined in this article, under the
West Virginia public employees retirement system;
(6) "Employee" means any person who serves regularly as an officer or employee, full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable in whole or in part by any political subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia national guard whose compensation in whole or in part is paid by the federal government: Provided, That members of the state Legislature, the clerk of the house of delegates, the clerk of the state senate and members of the legislative body of any political subdivision shall be considered to be employees, anything contained herein to the contrary notwithstanding. In any case of doubt as to who is an employee within the meaning of this article the board of trustees shall decide the question;
(7) "Member" means any person who is included in the membership of the retirement system;
(8) "Retirant" means any member who retires with an annuity payable by the retirement system;
(9) "Beneficiary" means any person, except a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement system;
(10) "Service" means personal service rendered to a participating public employer by an employee, as defined in this article, of a participating public employer;
(11) "Prior service" means service rendered prior to July one, one thousand nine hundred sixty-one, to the extent credited a member as provided in this article;
(12) "Contributing service" means service rendered by a member from and after the date of his entrance in the retirement system, to the extent credited him as provided in this article;
(13) "Credited service" means the sum of a member's prior service credit and contributing service credit standing to his credit as provided in this article;
(14) "Compensation" means the remuneration paid a member by a participating public employer for personal services rendered by him to the participating public employer. In the event a member's remuneration is not all paid in money, his participating public employer shall fix the value of the portion of his remuneration which is not paid in money;

(15) "Final average salary" means the average of the highest annual compensations received by a member during any period of five consecutive years of his credited service contained within his ten years of credited service immediately preceding the date his employment with a participating public employer last terminated. If he has less than five years of credited service, his final average salary shall be the average of the annual rate of compensations received by him during his total years of credited service;

(16) "Accumulated contributions" means the sum of all amounts deducted from the compensations of a member and credited to his individual account in the members deposit fund, together with regular interest thereon;

(17) "Regular interest" means such rate or rates of interest per annum, compounded annually, as the board of trustees shall from time to time adopt;

(18) "Annuity" means an annual amount payable by the retirement system throughout the life of a person. All annuities shall be paid in equal monthly installments, using the upper cent for any fraction of a cent;

(19) "Annuity reserve" means the present value of all payments to be made to a retirant or beneficiary of a retirant on account of any annuity, computed upon the basis of such mortality and other tables of experience, and regular interest, as the board of trustees shall from time to time adopt;

(20) "Retirement" means a member's withdrawal from the employ of a participating public employer with an annuity payable by the retirement system;

(21) "Actuarial equivalent" means a benefit of equal value computed upon the basis of such mortality table and
regular interest as the board of trustees shall from time to
time adopt;

(22) The masculine gender shall include the feminine
gender, and words of the singular number with respect to
persons shall include the plural number, and vice versa.

Sec. 14. Service Credit.—(a) The board of trustees
shall credit each member with the prior service and con-
tributing service to which he is entitled based upon such
rules and regulations as the board of trustees shall from
time to time adopt: Provided, That in no case shall less
than ten days of service rendered by a member in any
calendar month be credited as a month of service; nor
shall less than ten months of service rendered in any
calendar year be credited as a year of service; nor shall
more than one year of service be credited any member for
all service rendered by him in any calendar year; nor shall
any member who was not in the employ of a political sub-
division within a period of five years immediately preced-
ing the date the political subdivision became a participat-
ing public employer be credited with prior service.

(b) The board of trustees may grant service credit
to employees of boards of health, the clerk of the house
of delegates and the clerk of the state senate who are
participating members, for service previously credited by
the state teachers' retirement system, and may require
a transfer of the members' contributions to the retirement
system, and may also require a deposit, with interest,
of any withdrawals of contributions.

Sec. 17. Retirement System Membership.—The mem-
bership of the retirement system shall consist of the fol-
lowing persons:

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

(b) The membership of the retirement system shall not
include any person who is a member of, or who has been
retired by, the state teachers' retirement system, the
judges' retirement system, the retirement system of the
department of public safety, or any municipal retirement
system for either, or both, policemen or firemen; and the
West Virginia department of employment security, by the
director of such department, may elect whether its em-
ployees will accept coverage under this article or be cov-
ered under the authorization of a separate enactment:
Provided, That such exclusions of membership shall not
apply to any member of the state Legislature, the clerk of
the house of delegates, the clerk of the state senate or to
any member of the legislative body of any political sub-
division provided he once becomes a contributing member
of the retirement system.

(c) Any member of the state Legislature, the clerk of
the house of delegates, the clerk of the state senate or any
member of the legislative body of any other political sub-
division shall become a member of the retirement system
provided he notifies the retirement system in writing of
his intention to be a member of the system and files a
membership enrollment form as the board of trustees shall
prescribe, and each person, upon filing his written notice
to participate in the retirement system, shall by said act
authorize the clerk of the house of delegates or the clerk
of the state senate or such person as the legislative body of
any other political subdivision shall designate to deduct
said member's contribution, as provided in section twenty-
nine-b hereof, and after said deductions have been made
from said member's compensation, such deductions shall
be forwarded to the retirement system.

(d) Should any question arise regarding the member-
ship status of any employee, the board of trustees has the
final power to decide the question.

Sec. 20. Voluntary Retirement.—Any member who has
attained or attains age sixty years and has ten or more
years of credited service in force, at least one year of
which he was a contributing member of the retirement system, may retire upon his written application filed with
the board of trustees setting forth at what time, not less than thirty days nor more than ninety days subsequent to
the execution and filing thereof he desires to be retired. Upon his retirement he shall receive an annuity provided
for in section twenty-two hereof.

Sec. 21. Deferred Retirement.—(a) Except as provided in subsection (b) of this section, if any member, who
has twenty or more years of credited service in force, of which at least three years are contributing service, leave
the employ of a participating public employer prior to his attainment of age sixty years, for any reason except his
disability retirement or death, he shall be entitled to an annuity computed according to section twenty-two here-
of, as the said section was in force as of the date of his said separation from the employ of a participating public em-
ployer: Provided, That he does not withdraw his accumulated contributions from the members deposit fund. His
said annuity shall begin the first day of the calendar month next following the month in which his application
for same is filed with the board of trustees on or after his attainment of age sixty-two years.

(b) Any member who is an elected executive official of the state government, or who is an elected judge of a court
of record, or who is a member of the Legislature, and who has eight or more years of credited service in force, of
which at least three years are contributing service, and who leaves his office for any reason except his disability
retirement or death, shall be entitled to an annuity computed according to section twenty-two hereof, as the said
section was in force as of the date of his said separation from the employ of a participating public employer, not-
withstanding that he might not have ten years of credited service: Provided, That he does not withdraw his ac-
cumulated contributions from the members deposit fund. His said annuity shall begin the first day of the calendar
month next following the month in which his application for same is filed with the board of trustees on or after his
attainment of age sixty-two years.
Sec. 22. Retirement Annuity.—Upon a member's retirement, as provided in this article, he shall receive a straight life annuity equal to one per cent of his final average salary multiplied by the number of years, and fraction of a year, of his credited service in force at the time of his retirement. Upon his retirement he shall have the right to elect an option provided for in section twenty-four hereof. All annuity payments shall commence effective the first of the month following the month in which a member retires or a member dies leaving a beneficiary entitled to benefits and shall continue to the end of the month in which said retirant or beneficiary dies, and said annuity payments shall not be prorated for any portion of a month in which a member retires or retirant or beneficiary dies.

Sec. 25. Disability Retirement.—(a) Upon the application of a member, or his employing authority, a member who (1) is in the employ of a participating public employer, (2) has ten or more years of credited service, and (3) becomes totally and permanently incapacitated for duty in the employ of a participating public employer, by reason of a personal injury or disease, may be retired by the board of trustees: Provided, That after a medical examination of the said member, made by or under the direction of a medical committee consisting of two physicians, one of whom shall be named by the board, and one by the said member, the said medical committee reports, in writing, to the board that (1) the said member is physically or mentally totally incapacitated for duty in the employ of a participating public employer, (2) that such incapacity will probably be permanent, and (3) that the said member should be retired. In the event the two above-mentioned physicians do not agree in their findings, then the board of trustees may, at its discretion, appoint a third physician to examine said member and, based upon the third physician's report in writing, the board may retire said member.

(b) A member with less than ten years of credited service shall have the service requirement provided for in subsection (a) above waived in the event (1) the board of trustees finds his total and permanent disability
to be the natural and proximate result of a personal injury or disease arising out of and in the course of his actual performance of duty in the employ of a participating public employer, and (2) he is in receipt of workmen's compensation on account of such physical or mental disability.

(c) Upon a member's retirement, as provided in this section, he shall receive a straight life annuity computed according to section twenty-two hereof and he shall have the right to elect an option provided for in section twenty-four hereof: Provided, however, That his straight life annuity payable to his attainment of age sixty-five years shall not be less than twenty-five per cent of his final average salary; and his said straight life annuity payable from and after his attainment of age sixty-five years shall not be less than ten per cent of his final average salary: Provided further, That his said annuity shall be subject to section twenty-six hereof.

Sec. 27. Nonduty Death Annuities.—(a) Any member who continues in the employ of a participating public employer on or after the date he either (1) acquires twenty-five years of credited service, or (2) attains age sixty years and has ten or more years of credited service, may at any time prior to the effective date of his retirement, by written declaration duly executed and filed with the board of trustees, in the same manner as if he were then retiring from the employ of a participating public employer, elect option A provided for in section twenty-four hereof, and nominate a beneficiary whom the board finds to have been dependent upon the said member for at least fifty per cent of his financial support. Prior to the effective date of his retirement a member may revoke his said election of option A and nomination of beneficiary and he may again prior to his retirement elect the said option A and nominate a beneficiary as provided in this subsection. Upon the death of a member who has an option A election in force, his beneficiary, if living, shall immediately receive an annuity computed in the same manner in all respects as if the said member had retired the day preceding the date of his death, not-
withstanding that he might not have attained age sixty years, and elected the said option A. If at the time of his retirement a member has an option A election in force, his said election of option A and nomination of beneficiary shall thereafter continue in force.

(b) In the event any member continues in the employ of a participating public employer on or after the date he either acquires twenty-five years of credited service, or attains age sixty years and has ten or more years of credited service, and does not have an option A election in force as provided in subsection (a) of this section, and (1) dies while in the employ of a participating public employer, and (2) leaves a widow, or in the case of a female member leaves a widower whom the board of trustees finds to be totally and permanently disabled and to have been dependent upon the said female member for at least fifty per cent of his financial support, the said widow or widower, as the case may be, shall immediately receive an annuity computed in the same manner in all respects as if the said member had (1) retired the day preceding the date of his death, notwithstanding that he might not have attained age sixty years, (2) elected option A provided for in section twenty-four hereof, and (3) nominated his said widow or widower, as the case may be, as beneficiary.

(c) In the event any member continues in the employ of a participating public employer on or after the date he either (1) acquires twenty-five years of credited service, or (2) attains age sixty years and has ten or more years of credited service, and (3) dies without leaving surviving him a spouse, but (4) leaves surviving him an infant child or children, and (5) does not have a beneficiary nominated as provided in subsection (a) of this section, said infant child or children shall be entitled to an annuity to be calculated as follows: The annuity reserve shall be calculated as though said member had retired as of the date of his decease and elected a straight life annuity, and the amount of said annuity reserve shall be paid in equal monthly installments to said member's infant child or children until said child or children attain
age twenty-one or sooner marry or become emancipated; however, in no event shall any child or children receive more than two hundred fifty dollars per month each. The said annuity payments shall be computed as of the date of the death of the said member and the amount of said annuity shall remain constant during the period of payment. The annual amount of the annuities payable by this section shall not exceed sixty per cent of said deceased member’s final average salary.

Sec. 30. Refund of Accumulated Contributions.—(a) In the event a member leaves the employ of a participating public employer prior to the date he becomes entitled to retire with an annuity payable by the retirement system he shall be paid, upon his written application filed with the board of trustees, his accumulated contributions standing to his credit in the members deposit fund, if his separation from the employ of a participating public employer occurs subsequent to a period of five years from and after the date he last became a member of the system. If his said separation from the employ of a participating public employer occurs within a period of five years from and after the date he last became a member of the system, he shall be paid his accumulated contribution standing to his credit in the members deposit fund less the total interest credited to his individual account therein; and the said total interest credit shall be transferred to the income fund.

(b) In the event a member dies and does not leave a beneficiary entitled to an annuity payable by the retirement system, his accumulated contributions standing to his credit in the members deposit fund at the time of his death shall be paid to such person or persons as he shall have nominated by written designation duly executed and filed with the board of trustees. If there be no such designated person or persons surviving the said member, his said accumulated contributions shall be paid to his estate.

(c) Refunds of a member’s contributions or accumulated contributions, as the case may be, may be made in equal installments according to such rules and regula-
(d) In the event a member dies and a refund of his contributions is due to be made to an infant child or children by reason of being the person or persons nominated by written designation duly executed and filed with the retirement system, and the amount of said refund is less than one thousand dollars, then, and in said event, the board of trustees may make said refund, upon written application, to the closest relative or natural guardian for the use of said infant child or children. The board of trustees may, at its discretion, require that said relative or natural guardian post bond with the retirement system to insure that said money will be used for the benefit of said infant child or children. In any event, before said refund is made to said relative or natural guardian of the said infant or infants, said relative or natural guardian shall give the retirement system an indemnifying release of said sums so paid over.

Sec. 31. Employers Accumulation Fund.—(a) The employers accumulation fund is hereby created. It shall be the fund in which shall be accumulated the contributions made by the participating public employers to the retirement system, and from which transfers shall be made as provided in this section.

(b) Based upon the provisions of section thirteen of this article, the participating public employers' contributions to the retirement system shall be determined, according to paragraphs (1), (2), (3) and (4) below, for the state as the state division, and for the other participating public employers as the public employer division.

(1) The participating public employers' contributions for members' current service shall be a per cent of the members' annual compensation which will equal an amount which if paid annually by the participating public employers during the members' future service will be sufficient to provide, at the time annuities will become payable on their account, the difference between the annuity reserves for the future service portions of the an-
nuities to be paid and the present value of the members' future net contributions.

(2) The participating public employers' contributions for members' accrued service shall be a per cent of the members' annual compensation which will equal an amount which if paid annually by the participating public employers over a period of years, to be determined by the board of trustees, will amortize, at regular interest, the unfunded annuity reserves for the accrued portions of the annuities to be paid on account of members.

(3) The participating public employers' contributions for annuities being paid retirants and beneficiaries shall be a per cent of the members' annual compensations which will equal an amount which if paid annually by the participating public employers over a period of years, to be determined by the board of trustees, will amortize, at regular interest, the unfunded annuity reserves for annuities being paid retirants and beneficiaries.

(4) In no year shall the total of the contributions, provided for in paragraphs (1), (2) and (3) above, to be paid by any participating public employer exceed six per cent of the total payroll for the members in the employ of such participating public employer for the preceding fiscal year.

Sec. 33. Contributions by Other Participating Public Employers.—(a) The board of trustees shall annually certify to each participating public employer, other than the state, the employer contribution rate, determined in section thirty-one hereof, for the public employer division. Each participating public employer shall pay to the state treasurer, for credit to the retirement system, the contributions equal to the said contribution rate applied to each and every payroll of the participating public employer. The said payments shall be made in such manner and form, and in such frequency, and shall be accompanied by such supporting data, as the board shall from time to time prescribe. When paid, the said contributions shall be credited to the employers accumulation fund.

(b) If any participating public employer, other than the state, fails to make any payment due the retirement
system for a period of sixty days after the payment is
due, the participating public employer shall become de-
linquent, and such delinquency shall be certified to the
state auditor by the board of trustees. If any participat-
ing public employer becomes delinquent, as provided
herein, the state auditor is authorized and directed to
withhold any money due such participating public
employer by the state until such delinquency, together
with regular interest thereon, from the date due, is satis-
fied. Such money so withheld by the state auditor shall
be paid to the retirement system.

Sec. 48. Re-employment after Retirement.—In the
event a retirant becomes employed by a participating
public employer, payment of his annuity shall be sus-
pended during the period of his re-employment. Upon
termination of such re-employment, payment of his an-
uity will be resumed without increase or decrease due
to such re-employment.

Sec. 49. Removal from Office.—Any member of the re-
tirement system who has been removed from office or his
office shall have been vacated for official misconduct, in-
competence, neglect of duty, gross immorality, malfica-
sance, or misfeasance shall immediately have his mem-
bership in the retirement system terminated permanently
by the board of trustees and shall never become eligible
for an annuity; however, any such member so terminated
by virtue of this section shall be entitled to a refund of
his contributions with regular interest as provided in sec-
tion thirty hereof.

Sec. 50. Validity.—If any part of this article is declared
unconstitutional by a court of competent jurisdiction, such
decision shall not affect the validity of the remaining pro-
visions of this article, or the article in its entirety.
CHAPTER 160

(Com. Sub. for Senate Bill No. 44—Originating in the Senate Committee on Roads and Navigation)

[Passed March 9, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting section three, article one thereof; and sections seven, thirteen and fifteen, article two-a thereof; by adding to article two-a thereof eight new sections, designated sections four-a, four-b, eight-a, eight-b, seventeen, eighteen, nineteen and twenty; by amending and reenacting section four, article three thereof; by adding to article three thereof a new section, designated section four-a; by amending and reenacting sections nine, ten, eleven, twenty-one, twenty-six, twenty-nine, thirty and thirty-one, article four thereof, all relating to the improvement, administration and supervision of the state system of roads and highways; including, among other things, definitions of roads and highways, the purchase of materials for the state road program, the acquisition of property for the state road commission, advance payments into court by the state road commission in condemnation actions, the disposal of state road commission real property, payment of traveling expenses of prospective employees and moving expenses of new employees, educational training for present and prospective highway personnel, allowance to expert witnesses in eminent domain proceedings, emergency towing and fuel for stalled vehicles, assistance to persons dislocated by highway construction, elimination or avoidance of railway-highway crossings at grade, relocation of utility lines, and protest against, hearing on, and judicial review of order directing the separation or elimination of grades.

Be it enacted by the Legislature of West Virginia:

That chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended
by amending and reenacting section three, article one thereof;
and sections seven, thirteen and fifteen, article two-a thereof;
by adding to article two-a thereof eight new sections, design-
nated sections four-a, four-b, eight-a, eight-b, seventeen, eight-
een, nineteen and twenty; by amending and reenacting section
four, article three thereof; by adding to article three thereof
a new section, designated section four-a; by amending and re-
enacting sections nine, ten, eleven, twenty-one, twenty-six,
twenty-nine, thirty and thirty-one, article four thereof, all to
read as follows:

**Article**

1. **Definitions.**
2-a. State Road Commissioner.
3. State Road Fund.
4. State Road System.

**Article 1. Definitions.**

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<td>3. Road; public road; highway.</td>
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**Section 3. Road; Public Road; Highway.**—The words or
terms "road," "public road," or "highway" shall be
deemed to include, but shall not be limited to, the right of
way, roadbed and all necessary culverts, sluices, drains,
ditches, waterways, embankments, slopes, retaining walls,
bridges, tunnels and viaducts necessary for the mainte-
nance of travel, dispatch of freight and communication
between individuals and communities; and such public
road or highway shall be taken to include any road to
which the public has access and which it is not denied
the right to use, or any road or way leading from any
other public road over the land of another person, and
which shall have been established pursuant to law. Any
road shall be conclusively presumed to have been estab-
lished when it has been used by the public for a period
of ten years or more, and public moneys or labor have
been expended thereon, whether there be any record of
its conveyance, dedication or appropriation to public use
or not. In the absence of any other mark or record, the
center of the traveled way shall be taken as the center of
the road and the right of way shall be designated there-
from an equal distance on each side, but a road may be
constructed on any part of the located right of way when
it is deemed advisable so to do.
Article 2-a. State Road Commissioner.

Section 4-a. Payment of traveling expenses of prospective employees and moving expenses of new employees.

Section 4-b. Scholarships for training highway personnel; notes for money advanced; payment or cancellation of notes.

Section 7. Legal services.

Section 8-a. Authority to employ expert witnesses in eminent domain proceedings; compensation.

Section 8-b. Authority to provide emergency road service.

Section 13. Purchase of materials, supplies and equipment.

Section 15. Other laws not controlling.

Section 17. Acquisition of property for state road purposes; “state road purposes” defined.

Section 18. Acquisition of real property not needed for road purposes.

Section 19. Sale, exchange, or lease of real property; rules and regulations.

Section 20. Relocation assistance; limits on payments; rules and regulations.

Section 4-a. Payment of Traveling Expenses of Prospective Employees and Moving Expenses of New Employees.—In addition to the other powers given and assigned to him in this chapter, the commissioner may authorize the payment of the traveling expenses incurred by any person he requests to visit his office to be interviewed concerning the possible employment of such person by the state road commission. When a person is first employed by the commission, the commissioner may authorize the payment of all or part of the expense incurred by such person in moving his household effects to his place of employment. The expenditures for such payments shall be made from the state road fund.

Section 4-b. Scholarships for Training Highway Personnel; Notes for Money Advanced; Payment or Cancellation of Notes.—The Legislature hereby declares that there is a wide and continuing need for trained personnel in the state road commission of this state and that the scholarships herein provided will aid the state road commission in attracting and holding competent employees.

The state road commissioner is empowered to award scholarships to competent persons, whether presently employed by the state road commission or not, for the purpose of enabling and encouraging such persons to attend a college or university to pursue such course of study as may be approved by the state road commissioner, but the number of persons holding such scholarships at any one time shall not exceed twelve. Each scholarship shall carry a stipend in an amount fixed by the state road com-
missioner not in excess of four thousand dollars in the aggregate, such sum to be paid to the recipient in equal installments at the beginning of each quarter or semester for which the recipient has agreed to pursue his course of study. The necessary expenditures for such scholarships shall be made from the funds available to the state road commission. The recipient of a scholarship shall execute notes and shall deliver said notes to the state road commissioner. Each such note shall be in the amount of the sum received from the state road fund and shall be payable on demand to the state treasurer. The state road commissioner shall hold said notes and if, for any reason, except death or physical or mental disability, or being drafted into the armed services, the recipient of a scholarship fails successfully to complete the course of study for which the scholarship was granted or if after the completion of the prescribed course of study does not continue or become an employee of the state road commission, or ceases to be an employee before all such notes have been paid or cancelled, the state road commissioner shall make demand for payment of all of said unpaid and uncancelled notes and shall transmit all such notes promptly to the state treasurer who shall enforce collection thereon and shall deposit such sums so collected thereon in the state road fund. The state road commissioner is authorized to credit the oldest outstanding note in the sum of four hundred dollars every six months that the recipient of the scholarship is employed by the state road commission after having completed the course of study for which the scholarship was granted. The state road commissioner shall have the power and authority to make all necessary rules and regulations to carry this section into effect.

Sec. 7. Legal Services.—Notwithstanding any law to the contrary, the commissioner:

(1) Shall select and employ a competent legal staff adequate for the ordinary legal services required by him and shall provide therefor such quarters, equipment, facilities, services and stenographic and other personnel as may be necessary;
(2) May call upon the attorney general and the prosecuting attorneys of the several counties, within their respective jurisdictions, for legal assistance and services as provided by law;

(3) May employ such additional legal counsel as he deems necessary upon a reasonable fee basis to perform legal services in acquiring, by right of eminent domain or otherwise, property, or an estate, right or interest therein.

Sec. 8-a. Authority to Employ Expert Witnesses in Eminent Domain Proceedings; Compensation.—Notwithstanding any law to the contrary, the commissioner may employ as witnesses to testify in eminent domain proceedings such persons who are qualified to give competent testimony as to the value of the property, or estate, right or interest therein, being condemned in an eminent domain proceeding, as he deems necessary. Each such person so employed shall receive for his services the sum agreed upon in a written contract signed by the commissioner and such person. The sum contracted to be paid, however, shall not be made contingent upon the outcome of the action or hearing in which the competent testimony is to be given.

Sec. 8-b. Authority to Provide Emergency Road Service.—In addition to the other powers given and assigned to him in this chapter, where an emergency exists, the commissioner may authorize the use of state road commission vehicles to provide towing service to vehicles stranded on any highway in this state, or may provide a sufficient quantity of gasoline or other fuel for the vehicle to propel it to a point where such fuel may be purchased.

Sec. 13. Purchase of Materials, Supplies and Equipment.—All materials, supplies and equipment required for the state road program and system shall be purchased and acquired by the commissioner through the department of purchases, except as otherwise provided by law. The director of purchases shall adopt rules and regulations governing and controlling acquisitions and purchases in accordance with accepted business practices so that no persons shall be precluded from participating and
making sales thereof to the commission; shall establish
and prescribe specifications, in all proper cases, for ma-
terials, supplies and equipment to be purchased; shall
adopt and prescribe such purchase order, requisition or
other forms as may be required; shall negotiate for and
make purchases and acquisitions in such quantities, at
such times and under contract, in the open market or
through other accepted business methods and practices,
as may be practicable in accordance with general law;
shall determine whether to advertise for bids, to purchase
by means of sealed bids and competitive bidding or to
effect advantageous purchases through other accepted
methods and practices; and shall post in a public place in
the offices of the commission and the department of pur-
chases, available to the public during all business hours,
notices of all acquisitions and purchases to be made, at
least two weeks prior to making such purchases.

All purchases and acquisitions shall be made in con-
sideration and within limits of available appropriations
and funds and in accordance with applicable provisions of
article two, chapter five-a of this code, relating to ex-
penditure schedules and quarterly allotments of funds.

The director of purchases shall make available the
facilities and services of his department to the commis-
sioner in the purchase and acquisition of materials, sup-
plies and equipment and shall cooperate with the com-
missioner in all such purchases and acquisitions upon
request of the commissioner. The actual expenses in-
curred by the director of purchases in all such cases shall
be paid by the commissioner.

Sec. 15. Other Laws Not Controlling.—The provisions
of article three, chapter five-a of this code shall not con-
trol or govern the purchase, acquisition or disposition of
any equipment, materials or supplies by the commis-
sioner, except as provided in sections thirteen and four-
teen of this article. The commissioner may, in his discre-
tion, resort to applicable provisions of said chapter five-a
and to rules, regulations and practices of the director of
purchases in purchasing, acquiring or disposing of equip-
ment, supplies and materials.
Sec. 17. Acquisition of Property for State Road Purposes; "State Road Purposes" Defined.—In addition to all other powers given and assigned to the commissioner in this chapter, the commissioner may acquire, either temporarily or permanently, in the name of the state road commission, all real or personal property, public or private, or any interests or rights therein, including any easement, riparian right, or right of access, deemed by the commissioner to be necessary for present or presently foreseeable future state road purposes by gift, lease, grant, bequest, devise, agreement, purchase, exchange, right of eminent domain, or other lawful means. Such real property may be acquired in fee simple or in any lesser estate or interest therein, except in the case of a public road the right of way only shall be acquired. Acquisition of such personal property shall be subject to the provisions of sections thirteen and fifteen of this article. Nothing in this section shall be deemed to restrict or relinquish any right the state or any agency thereof now or hereafter possesses or may exercise by virtue of the police power or other lawful authority.

As used in this article, "state road purposes" shall include provision for, but shall not be limited to, the following:

(a) Constructing, establishing, laying out, widening, enlarging, extending, straightening, reconstructing, relocating, grading, altering, improving, and maintaining state roads;

(b) Rights of way for state roads, including those needed for such roads within municipalities, such rights of way to be as wide as deemed necessary by the commissioner;

(c) Adequate drainage of state roads;

(d) Controlled-access facilities, as defined in section thirty-nine, article four of this chapter, including existing and vested rights of access, air, view and light, whether privately or publicly owned, and local service roads to controlled-access facilities;

(e) Broadcasting stations, weighing stations, shops, equipment sheds, office buildings, storage buildings and
roads and highways

(f) Road-building material storage sites, quarry sites, gravel pits, sites for the acquisition or manufacture of road building materials including borrow pits, stock pile sites, waste-material sites and access roads to any such sites or places;

(g) The culture and support of trees which benefit any state road by aiding in the maintenance and preservation of the road;

(h) Preservation of scenic places and other objects of attraction or scenic value adjacent to or near any state road, or which may be conveniently reached from or by a state road;

(i) Development and maintenance of parking places, auto camps, camp sites, roadside parks, forest or timbered areas or other places of attraction and scenic value which are adjacent to or near any state road and which in the judgment of the commissioner are necessary for the convenience of the public and will contribute to the general welfare and pleasure of the motoring public or road users;

(j) Maintenance of an unobstructed view of any portion of any state road in order to provide for the safety of the traveling public;

(k) Erection and maintenance of markers, warning signs and traffic signals;

(l) Construction and maintenance on state roads of sidewalks and highway illumination;

(m) Elimination or prevention of hazardous or undesirable points of entry to state roads from adjacent property;

(n) Acquisition of property, or any interest or right therein, for the purpose of exchanging it for other property, or any interest or right therein, which the commissioner is authorized to acquire by the other provisions of this section: Provided, That such substitute property, or any interest or right therein, may be acquired by the commissioner by condemnation only if the following con-
80 ditions are satisfied: (1) Money compensation would be
81 substantially inadequate for the property, or interest or
82 right therein, which the commissioner is authorized to
83 acquire by the other provisions of this section, and (2)
84 the commission has entered into a written agreement to
85 exchange the substitute property, or the right or interest
86 therein, for the property, or right or interest therein,
87 which is needed for state road purposes, regardless of
whether the person who has agreed to accept the ex-
change has the right to condemn the substitute property,
or the right or interest therein;
89 (o) Acquisition of real property, not needed as such
90 for a state road, for the purpose of moving and relocating
91 thereon a building or other structure or appurtenance
92 which is situated on a lot or tract of land all or a portion
93 of which is needed for a state road and which, after re-
94 location, will be suitable for the purpose for which it was
95 used prior to its being relocated: Provided, however,
96 That such additional real property may be acquired by
97 the commissioner by condemnation only if the following
98 conditions are satisfied: (1) The building or other struc-
99 ture or appurtenance is of substantial value, (2) the real
100 property on which it is to be relocated is not substantially
101 improved and is adjacent to or near the location from
102 which it is to be removed, (3) the owner of the real
103 property needed for the state road has entered into a
104 written agreement with the commission to accept in ex-
105 change the additional property with the relocated build-
106 ing or structure or appurtenance thereon, (4) substantial
107 savings in expenditure of state road funds will result
108 from condemning the additional property and relocating
109 the building or structure or appurtenance rather than
110 condemning the lot or tract, or the portion thereof, on
111 which the building or other structure or appurtenance
112 may be located, and (5) the real property with the re-
113 located building or structure or appurtenance thereon
114 will be relatively equal in value to the real property
115 needed for the state road.

Sec. 18. Acquisition of Real Property Not Needed for
2 Road Purposes.—In connection with the acquisition of
real property, or any interest or right therein, for state road purposes, the commissioner may acquire, by any lawful means other than by eminent domain or condemnation, an entire lot, block, or tract of real property, or any portion thereof, even though it is not needed for present or presently foreseeable future state road purposes, if uneconomic remnants would be left the owner or if severance or consequential damages to the remainder make acquisition of the additional property more economical to the state.

Sec. 19. Sale, Exchange, or Lease of Real Property; Rules and Regulations.—The state road commission, subject to the conditions herein, may sell, exchange, or lease real property, or any interest or right therein, held by the state road commission.

When the real property, or any interest or right therein, is being held for future road purposes, it may be leased. When the real property, or any part thereof, or any interest or right therein, is deemed by the commissioner not necessary, or desirable for present or presently foreseeable future state road purposes, it may be exchanged for other real property, or any interest or right therein, deemed by the commissioner to be necessary or desirable for present or presently foreseeable future state road purposes, or it may be sold. In addition the commission may exchange real property, or any part thereof, or any interest or right therein, even though it may be necessary or desirable for present or presently foreseeable future state road purposes, if the exchange is made for other real property, or any interest or right therein, in close proximity thereto which the commissioner deems of equal or superior useful value for present or presently foreseeable future state road purposes. In making exchanges the commission may make allowances for differences in the value of the properties being exchanged and may move or pay the cost of moving buildings, structures, or appurtenances in connection with the exchange.

Every such sale of real property, or any interest or right therein or structure thereon, shall be at public auction in the county in which the real property, or the greater part
thereof in value, is located, and the commission shall ad-
vertise, by publication or otherwise, the time, place, and
terms of such sale at least twenty days prior thereto. The
property shall be sold in the manner which will bring the
highest and best price therefor. The commission may
reject any or all bids received at the sale. The commis-
sioner shall keep a record, open to public inspection, indi-
cating the manner in which such real property, or any in-
terest or right therein or structure thereon, was publicly
advertised for sale, the highest bid received therefor and
from whom, the person to whom sold, and payment re-
ceived therefor. Such record shall be kept for a period
of five years and may thereafter be destroyed.

The commissioner shall adopt and promulgate rules and
regulations governing and controlling the making of any
leases or sales pursuant to the provisions of this section,
which rules and regulations may provide for the giving
of preferential treatment in making leases to the persons
from whom the properties or rights or interests therein
were acquired, or their heirs or assigns.

The commissioner may insert in any deed or convey-
ance, whether it involves an exchange, lease, or sale, such
conditions as are in the public interest and have been ap-
proved in advance by the governor.

All moneys received from the exchange, sale, or lease
of real property, or any right or interest therein, shall
be paid into the state treasury and credited to the state
road fund.

Sec. 20. Relocation Assistance; Limits on Payments;
Rules and Regulations.—The payment of relocation costs
to persons dislocated by highway construction is hereby
declared to be a cost of highway construction and may be
paid from the state road fund, subject to the provisions
of this section. The state road commissioner shall make
the payments authorized by this section to reduce hard-
ships to persons so dislocated. In addition, the commis-
sioner shall render advisory assistance to persons affected
and shall call upon and coordinate the services of such
other agencies of state and local government as may be
capable of rendering such assistance to reduce hardships
to persons affected and to reduce delays in highway construc-

tion. In rendering such advisory assistance, the com-

missioner may accumulate and maintain lists of various

kinds of properties available to which persons affected

may be relocated, and acquire and file such other infor-

mation and take such other action as may be necessary

to render such advisory assistance.

Any individual, family, business concern (including the

operation of a farm) or nonprofit organization to be dis-

placed by a highway construction project shall be com-

pensated consistent with the provisions and limitations of

this section for reasonable and necessary costs to be in-
curred in consequence of being so displaced. When a

family is displaced, no additional payments shall be made
to individuals who are members of such family; but, if two

or more displaced families occupy the same dwelling or

comprise a single household, each family within such
dwelling or household may receive relocation costs as pro-

vided in this section. Payments under this section are

subject to the following limitations and to any rules and

regulations made by the commissioner as herein author-

ized:

(1) Payments shall not exceed two hundred dollars in

the case of a family or an individual, or three thousand

dollars in the case of a business concern (including the

operation of a farm) or nonprofit organization;

(2) In the case of a business concern (including the

operation of a farm) and in the case of a nonprofit or-

ganization, the allowable expense for transportation under

this section shall not exceed the reasonable and necessary
cost of moving fifty miles from the point from which such

business or organization is being displaced and no expenses

shall be allowed if a substantial portion of such business

or organization is to be relocated outside the state.

The commissioner shall establish by rules and regula-
tions a procedure for the payment of relocation costs with-
in the limits of and consistent with the policies of this
section. Such rules and regulations may authorize lump

sum payments to individuals or families, in lieu of their

respective provable costs (not to exceed two hundred
dollars in any case), based upon the size of the dwelling
being vacated or the number of persons being affected
or any other reasonable basis. The commissioner may
authorize the obligation of or payment of relocation costs
in advance of expenditure for relocation by any person,
firm or organization eligible to receive such payment
where such advance obligation or payment would speed
the clearance of highway construction sites or reduce
hardships.

Article 3. State Road Fund.

Section 4. Method of disbursing road fund.
Section 4-a. Advancement of compensation for property immediately needed.

Section 4. Method of Disbursing Road Fund.—The com-
missioner shall certify monthly to the state auditor the
amount due to each member of the commission, himself
and each employee of the commission for services ren-
dered as such members, commissioner and employees and
the auditor shall issue his warrant therefor on the state
treasurer, payable out of the state road fund appropriated
for such purpose.

Any claim of a contractor or others, not otherwise pro-
vided for, for labor done or for materials, services or sup-
plies furnished to the state road commission, pursuant to
the provisions of any article of this chapter, shall be
audited by the commissioner, and, if found correct, the
commissioner shall issue the commission's requisition upon
the auditor of the state therefor, showing the nature of
such claim and whether it is for labor done or materials,
services or supplies furnished for construction of state
roads, or for other purposes, and the auditor shall issue
his warrant upon the state treasurer therefor, and the
treasurer shall pay the same to the person, firm or cor-
poration entitled thereto, out of the funds in the treasury
provided for that purpose.

Sec. 4-a. Advancement of Compensation for Property
Immediately Needed.—When the state road commissioner
has commenced an action for condemnation of any real
or personal property, or estate, right, or interest therein,
and immediate entry upon, possession of, appropriation
or use thereof, is deemed necessary by the commissioner, he may certify to the state auditor such facts, and issue the commission’s requisition upon the auditor for advancement of the sum the commissioner estimates to be the fair value of the property, or estate, right, or interest therein, sought to be condemned, and the damages, if any, to the residue beyond the benefits, if any, to such residue, by reason of the taking. Upon receipt of such certificate and requisition, the auditor shall issue his warrant upon the state treasurer in favor of the clerk of the court where-in the action was commenced, for the sum requisitioned by the commission, to the use of the defendants in that action, and the treasurer shall pay the same to the clerk of that court out of the funds in the treasury provided for this purpose.

Article 4. State Road System.

Section

9. Requiring railways to eliminate or avoid railway-highway crossing at grade.

10. Order eliminating or avoiding railway-highway crossings at grade; amendment to order.

11. Protest against order; hearing; judicial review.

21. Form of deeds and contracts; signing.

26. Designation of streets or bridges as connecting parts of state road system; bridges as part of state road system; maintenance by state.

29. Taking over streets not to affect franchise.

30. Taking over streets not to affect existing contracts.

31. Rules and regulations of commissioner to govern streets taken as connecting parts of the state road system.

Section 9. Requiring Railways to Eliminate or Avoid Railway-Highway Crossing at Grade.—Whenever in his judgment it is necessary for the safety of the traveling public or to comply with the safety, design or construction standards for a federal-aid highway project, the state road commissioner may require any railroad company, owning, controlling or operating a railroad in this state, to eliminate railway-highway crossings at grade on existing highways and to avoid railway-highway crossings at grade on new highways, relocated highways and extensions of existing highways by separating the grades or by relocating an existing highway. The commissioner may determine the location, design and grade for any project or structure for the elimination or avoidance of railway-
highway crossings at grade, and may determine whether a new, relocated or extended highway shall pass over or under the railroad right of way or tracks. The railroad company shall not be required to bear any part of the cost of construction or maintenance of such grade separation, except where the separation structure eliminates an existing grade crossing.

Sec. 10. Order Eliminating or Avoiding Railway-Highway Crossings at Grade; Amendment to Order.—(a) Whenever, in the judgment of the state road commissioner, it is necessary for the safety of the traveling public, or to comply with the safety, design or construction standards for a federal-aid highway project, that a railway-highway crossing at grade be eliminated on an existing highway or avoided on a new highway, relocated highway or extension of an existing highway by separating the grades or relocating an existing highway, the state road commissioner shall make an order to that effect and furnish a copy thereof by registered mail to the state auditor or attorney of record of the railroad affected by the order.

(b) The commissioner's order shall include at least the following:

1. A statement describing and locating the railway-highway crossing at grade to be eliminated or avoided; and

2. A statement of the general plan to be followed in effecting the elimination or avoidance of the specified railway-highway crossing at grade, including general details concerning the following matters:

(A) Whether a new, relocated or extended highway shall pass over or under the railroad right of way or tracks; and

(B) The location, grade and width of the grade separation structure or crossing to be constructed and the angle at which the structure or crossing shall meet and converge into the highway bed on either side of the railroad tracks or right of way.

(c) Whenever a railroad company affected by the or-
Sec. 11. Protest against Order; Hearing; Judicial Review.—Any railroad company dissatisfied with the order of the state road commissioner directing the separation or elimination of grades at any point, may, within thirty days after the receipt by the state auditor or attorney of record of such railroad company of a copy of the order directing the separation or elimination at such grades, file with the state road commissioner a protest giving the reasons of said railroad why such order should not be enforced. On the filing of such protest, the state road commissioner shall set down for hearing the matter in issue. On the hearing of the protest the state road commissioner shall hear all evidence which may be offered by any party upon the reasonableness of the separation or elimination of the grades, and if the commissioner, from the evidence, shall find that the construction of the work is necessary, he shall enter an order to that effect, and direct that the work shall be proceeded with in accordance with this article.

Any order entered by the state road commissioner pursuant to the provisions of this section shall be subject to judicial review by the circuit court of the county in which the grades to be separated or eliminated are located, or the circuit court of Kanawha county, upon the filing in such court or with the judge thereof in vacation, of a petition for appeal by the party or parties aggrieved by
such order, within thirty days from the date of the giving
of written notice of such order to the state road commis-
31 sioner to the party or parties to the hearing of the pro-
test by certified or registered mail.

The party or parties making such appeal shall forth-
with send a copy of such petition for appeal, by certified
or registered mail, to the state road commissioner. Upon
receipt of such copy of such petition for appeal the state
road commissioner shall promptly certify and file in such
court a complete transcript of the record upon which the
order complained of was entered. The costs of such
transcript shall be recovered by the party substantially
prevailing on appeal.

The court sitting in lieu of the jury, or judge thereof in
vacation, shall, after due notice, conduct a hearing on the
issues presented by such appeal and shall permit argu-
ment, oral or written or both, by the parties. The court
shall permit such pleadings, in addition to the pleadings
before the state road commissioner, as it deems to be re-
quired. Evidence relating to the making of the order
complained of and relating to the questions raised by the
allegations of the pleadings or other questions pertinent
in the proceeding may be offered by the parties to the
proceeding.

Upon such conditions as may be required and to the
extent necessary to prevent irreparable injury, any cir-
cuit court to which an appeal has been made as provided
in this section, may, after due notice to and hearing of
the parties to the appeal, issue all necessary and appropriate
process to postpone the effective date of order of the
state road commissioner complained of or to grant such
other relief as may be appropriate pending final determina-
tion.

A circuit court to which an appeal has been made as
provided in this section, may affirm, annul or revise the
order of the state road commissioner complained of, or it
may remand the proceeding to the state road commis-
sioner for such further action as it directs.

The decision of the circuit court on an appeal from the
state road commissioner shall be final, subject only to re-
Sec. 21. Form of Deeds and Contracts; Signing.—Every deed and contract made by the state road commissioner shall be made in the name of the state road commission and shall be signed by the commissioner, and every contract shall also be signed by the contractor.

Sec. 26. Designation of Streets or Bridges as Connecting Parts of State Road System; Bridges as Part of State Road System; Maintenance by State.—The state road commissioner may, at any time, after due consultation with and notice to the governing body of the municipal corporation, locate and designate or relocate and redesignate, as a connecting part of the state road system, any bridge or street within a municipal corporation. The commissioner may construct, reconstruct, improve and maintain the designated or redesignated connecting part at the cost and expense of the state.

Any existing free bridge forming a connecting link between two counties or two state routes is hereby adopted as part of the state road system and shall hereafter be maintained by the state, and any existing free bridge forming a connecting link between this and another state is hereby adopted as part of such system, and shall, as to that part of the bridge within the boundary of this state, be maintained by the state.

Sec. 29. Taking Over Streets Not to Affect Franchise.—The taking over of streets as provided in section twenty-six shall not affect the rights owned or held by any person under any franchise now existing or hereafter granted.

Sec. 30. Taking Over Streets Not to Affect Existing Contracts.—The taking over of any street as a connecting part of the state road system shall not affect any existing contract for construction, reconstruction or improvement.

Sec. 31. Rules and Regulations of Commissioner to Govern Streets Taken as Connecting Parts of the State
3 Road System.—The state road commissioner may, by
reasonable rules and regulations, govern the widths and
grades of streets designated as connecting parts of the
state road system. He may regulate the opening of pave-
ment for the construction or repair of service lines or sub-
structures, and may require adequate bond to secure the
proper replacement of the pavement. He may also make
other reasonable regulations concerning the construction
and maintenance of the streets.

In the absence of regulations by the commissioner, the
municipal authorities may continue to exercise the same
authority that they have over other streets within their
jurisdiction.

CHAPTER 161

(Senate Bill No. 82—By Mr. Carrigan and Mr. Martin)

[Passed March 7, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend article four, chapter seventeen of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended, by adding thereto a new section, designated
section seventeen-b, relating to the relocation of public
utility lines and facilities to accommodate federal-aid high-
way projects.

Be it enacted by the Legislature of West Virginia:

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

Article 4. State Road System; Primary and Secondary Roads.

Section 17-b. Relocation of public utility lines to accommodate federal-aid
highway projects.

Section 17-b. Relocation of Public Utility Lines to
Accommodate Federal-Aid Highway Projects.—When-
ever the state road commissioner shall determine that
any public utility line or facility located upon, across
or under any portion of a state highway shall be relocated in order to accommodate a federal-aid interstate highway project, and upon such determination and due notice thereof, the public utility owning or operating such facility shall relocate the same in accordance with the order of the commissioner: Provided, however, That the cost of such relocation shall be paid out of the state road fund in all cases involving the interstate system where proportionate reimbursement of such cost shall be obtained by the state road commissioner from the United States pursuant to the "Federal-Aid Highway Act of 1956" and all acts amendatory or supplementary thereto: And provided further, That the cost of any relocation of municipally-owned utility facilities and water or sanitary districts or authorities shall be paid out of state road funds in any case involving any federal-aid system where proportionate reimbursement of such cost shall be obtained by the state road commissioner from the United States.

For the purposes of this section, the term, "cost of relocation," shall include the entire amount paid by such utility, exclusive of any right-of-way costs incurred by such utility, properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and salvage value derived from the old facility. The cost of relocating utility facilities, as defined herein, in connection with any federal-aid interstate highway project is hereby declared to be a cost of highway construction.

CHAPTER 162
(Com. Sub. for Senate Bill No. 10—Originating in the Senate Committee on Roads and Navigation)

[Passed March 9, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto seven new sections, designated sections forty-seven, forty-eight, forty-nine, fifty,
Be it enacted by the Legislature of West Virginia:

That article four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto seven new sections, designated sections forty-seven, forty-eight, forty-nine, fifty, fifty-one, fifty-two and fifty-three, to read as follows:

Article 4. State Road System; Primary and Secondary Roads.

Section 47. Access from commercial, etc., property and subdivisions to highways; purpose and policies of regulation; removal of unauthorized access.

Section 48. Same; regulations by commissioner.

Section 49. Same; points of commercial, etc., access to comply; plans, objections and procedures for new points; review of and changes in existing points.

Section 50. Same; subdivision control for access regulation; notice and filing of plans; approval or disapproval by commissioner; effect of disapproval.

Section 51. Same; amendment or withdrawal of objections or preliminary determinations by commissioner; delegation of authority.

Section 52. Same; Requirements for objections, preliminary determinations and notices.

Section 53. Same; judicial review of determinations and final orders of commissioner.

Section 47. Access from Commercial, etc., Property and Subdivisions to Highways; Purpose and Policies of Regulation; Removal of Unauthorized Access.—(a) Access to and from state highways from and to real property used or to be used for commercial, industrial or mercantile purposes or from and to real property that is subdivided into lots is a matter of public concern and shall be regulated by the state road commissioner to achieve the following purposes:

1. To provide for maximum safety of persons traveling upon, entering or leaving state highways;
2. To provide for efficient and rapid movement of traffic upon state highways;
3. To permit proper maintenance, repair and drainage of state highways; and
4. To facilitate appropriate public use of state highways.
(b) Except where the right of access has been limited by or pursuant to law, every owner or occupant of real property abutting upon any existing state highway has a right of reasonable means of ingress to and egress from such state highway consistent with those policies expressed in subsection (a) of this section and any regulations issued by the commissioner under section forty-eight of this article.

(c) If the construction, relocation, or reconstruction of any state highway, to be paid for in whole or in part with federal or state road funds, results in the abutment of real property as defined in subsection (a) of this section on such state highway that did not previously abut on it, no rights of direct access shall accrue because of such abutment, but the commissioner may authorize and limit access, if any, from such property compatible with the policies stated in subsection (a) of this section and any regulations issued by the commissioner under section forty-eight of this article.

(d) The policies expressed in this section are applicable to state highways generally and shall in no way limit the authority of the state road commissioner to establish controlled-access facilities under the provisions of sections thirty-nine through forty-six of this article.

(e) Any unauthorized access to a state highway may be removed, blocked, barricaded or closed in any manner deemed necessary by the commissioner to protect the public and enforce the policies of this section and sections forty-eight, forty-nine and fifty of this article.

Sec. 48. Same; Regulations by Commissioner.—The state road commissioner is hereby authorized to issue reasonable regulations specifying standards for the location, design and construction of access facilities to state highways and any other regulations necessary to carry out the policies stated in section forty-seven of this article. Such regulations may be based upon any or all of the following:

(a) Standards suggested by any public organization or body concerned with highway or traffic safety; or

(b) Studies, surveys or reports made for the commissioner or for any other governmental agency; or
(c) Any other data deemed relevant by the commissioner. Regulations affecting access previously issued by the commissioner or the state road commission shall continue in effect until altered or withdrawn by the commissioner.

Sec. 49. Same; Points of Commercial, etc., Access to Comply; Plans, Objections and Procedures for New Points; Review of and Changes in Existing Points.—(a) No new points of access to and from state highways from and to real property used or to be used for commercial, industrial or mercantile purposes shall be opened, constructed or maintained without first complying with the provisions of this section and sections forty-seven and forty-eight of this article. Access points opened, constructed or maintained without such compliance are deemed unauthorized.

(b) Plans of any such new point of access shall be submitted to the state road commissioner directly, and the following rules shall apply:

(1) Notice of the proposed new point of access shall be filed with the commissioner, along with a plan of the proposed new point of access.

(2) The commissioner shall review the plan to insure compliance with the policies stated in section forty-seven of this article and with any regulations issued by the commissioner under section forty-eight of this article.

(3) The commissioner shall reduce his objections to the proposed new point of access, if any, to writing and promptly furnish notice of such objection to the owner or owners of the real property affected and of their right to demand a hearing thereon. A plan not so objected to within six weeks from the time it is filed with the commissioner shall be deemed to have been approved by the commissioner.

(4) In any case where the commissioner so objects to the proposed new point of access, the owner or owners of the real property affected shall have reasonable opportunity for a hearing on such objections.

(c) (1) Existing points of access to and from state highways from and to real property used for commercial, industrial or mercantile purposes may be reviewed by
the commissioner to determine whether such points of access comply with the policies stated in section forty-seven of this article and with any regulations issued by the commissioner under section forty-eight of this article. The commissioner may direct reasonable changes in existing points of access to and from state highways from and to property used for commercial, industrial or mercantile purposes if he determines from accident reports or traffic surveys that the public safety is seriously affected by such points of access and that such reasonable changes would substantially reduce the hazard to public safety. When such changes require construction, reconstruction or repair, such work shall be done at state expense as any other construction, reconstruction or repair.

(2) If the commissioner makes a preliminary determination that any such changes should be made, the following rules shall apply:

(a) The commissioner shall reduce his preliminary determination to writing and promptly furnish notice of such preliminary determination to the owner or owners of the real property affected and of their right to demand a hearing thereon. Such notice shall include a description of suggested changes deemed by the commissioner suitable to reduce the hazard to the public safety.

(b) In any case where the commissioner makes a preliminary determination that any such changes should be made, the owner or owners of the real property affected shall have reasonable opportunity for a hearing on such preliminary determination.

Sec. 50. Same; Subdivision Control for Access Regulation; Notice and Filing of Plans; Approval or Disapproval by Commissioner; Effect of Disapproval.—(a) In addition to other authority granted the commissioner to control access to state highways, the commissioner shall have authority in regard to the subdividing of land, any part of which abuts upon a state highway, as provided in this section.

(b) For purposes of this section, the following terms have the following meanings:

(1) "Lot" means an identified area of land one acre or less in size.
(2) "Subdividing" means the dividing, laying out or separating of five or more lots from or within a parcel of land or a successive dividing, laying out or separating of lots resulting in the creation of five or more lots within a parcel of land within five years.

(3) "Subdivision plan" means a graphic representation of a parcel of land showing the lots therein and any other relevant natural or man-made topographical feature.

(4) "Parcel" means an identified area of land owned by a person or owned by a combination of persons jointly or in common; or more than one identified area of land where such areas are contiguous and the owners act in concert in relation to such land.

(c) Subdividing occurs and a subdivision results within the meaning of this section whenever:

(1) A person subdivides five or more lots from a parcel at one time; or

(2) A successive division of lots out of a parcel results in the separation of the fifth or subsequent lot within a five-year period; or

(3) A person divides a parcel into tracts of land larger than a lot knowing, or having reason to know, that such parcels will in turn be divided or separated into a total of five or more lots.

(d) The remedies provided by this section shall not apply to lots which became such prior to the effective date of this section, but such lots may be considered in determining when an act of subdividing occurs after the effective date of this section, and in reviewing subdivision plans and applying remedies to lots which became such after the effective date of this section.

(e) The subdivision plans of the subdividing of any land, a part of which abuts on a state highway, shall be submitted to the state road commissioner directly, and the following rules shall apply:

(1) Notice of the proposal to subdivide shall be filed with the commissioner, along with a plan of the proposed subdivision.

(2) The commissioner shall review the plan to insur
compliance with the policies stated in section forty-seven
of this article and with any regulations issued by the
commissioner under section forty-eight of this article.

(3) The commissioner shall reduce his objections to
the proposed point of access to and from the state highway
from and to the real property that is to be subdivided into lots, if any, to writing and promptly furnish
notice of such objections to the person proposing such
subdivision and of his right to demand a hearing thereon.

A subdivision plan not so objected to within six weeks
from the time it is filed with the commissioner shall be
deemed to have been approved by the commissioner.

(4) In any case where the commissioner so objects to
the proposed access to and from a new subdivision plan,
the person submitting such plan shall have reasonable
opportunity for a hearing on such objections.

(f) A subdivision is deemed disapproved if it was not
submitted to the commissioner for review under the pro-
visions of this section or if the commissioner has made
timely objection to such plan and such objections have
not been withdrawn. Disapproval shall have the follow-
ing effect:

(1) The commissioner may post signs upon the ad-
jacent highway right of way stating that the subdivision
is disapproved, that access to and from lots in such sub-
division from and to the state highway is not allowed,
and any other relevant information deemed by the com-
missioner necessary to warn the public of such disapproval
and its effect; and

(2) The commissioner shall have authority to limit
access to and from such subdivision as a whole from and
to the state highway to such access as would have been
reasonable before the land was subdivided and to prevent
and prohibit any other access to and from the state high-
way from and to such subdivision.

Sec. 51. Same; Amendment or Withdrawal of Objec-
tions or Preliminary Determinations by Commissioner;
Delegation of Authority.—(a) The state road commis-
sioner may revise, amend or withdraw any objections
issued by him and any preliminary determinations made by him under sections forty-seven, forty-eight, forty-nine or fifty of this article upon reasonable notice to the owner or owners of the property affected or to the person submitting a subdivision plan.

(b) The commissioner may delegate the authority to make, revise, amend and withdraw objections and preliminary determinations and hold hearings required or authorized under this section and sections forty-seven, forty-eight, forty-nine and fifty of this article.

Sec. 52. Same; Requirements for Objections, Preliminary Determinations and Notices.—(a) All objections and preliminary determinations made pursuant to sections forty-seven, forty-eight, forty-nine and fifty of this article, and all notices required to be given pursuant to sections forty-seven, forty-eight, forty-nine, fifty and fifty-one of this article, shall be in writing. All such objections and preliminary determinations shall be signed by the person making them, and all such notices shall be signed by the person charged with the duty of giving the notice.

(b) Notice of any preliminary determination or objection required or authorized by sections forty-seven, forty-eight, forty-nine or fifty of this article shall be given by causing such notice to be delivered to the owner or owners of the real property affected or by causing a copy thereof to be sent by certified or registered mail to such owner or owners at his or their last-known place of business or residence.

Sec. 53. Same; Judicial Review of Determinations and Final Orders of Commissioner.—(a) Any objection or preliminary determination issued by the state road commissioner under sections forty-seven, forty-eight, forty-nine or fifty of this article shall be subject to judicial review by the circuit court of the county in which the real property affected is located, or the circuit court of Kanawha county, upon the filing in such court or with the judge thereof in vacation, of a petition for appeal by the owner or owners aggrieved by such objection or preliminary determination, within thirty days from the date of the
(b) The owner or owners making such appeal shall forthwith send a copy of such petition for appeal, by certified or registered mail, to the state road commissioner. Upon receipt of such copy of such petition for appeal the state road commissioner shall promptly certify and file in such court a complete transcript of the record upon which the preliminary determination or objection complained of was made. The costs of such transcript shall be paid by the commissioner.

(c) The court sitting in lieu of a jury, or judge thereof in vacation, shall, after due notice, conduct a hearing on the issues presented by such appeal and shall permit argument, oral or written or both, by the parties. The court shall permit such pleadings, in addition to the pleadings before the state road commissioner, as it deems to be required. Evidence relating to the making of the objection or preliminary determination complained of and relating to the questions raised by the allegations of the pleadings or other questions pertinent in the proceeding may be offered by the parties to the proceeding.

(d) Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, any circuit court to which an appeal has been made as provided in this section, may, after due notice to and hearing of the parties to the appeal, issue all necessary and appropriate process to postpone the effective date of the objection or final determination of the state road commissioner or to grant such other relief as may be appropriate pending final determination.

(e) A circuit court to which an appeal has been made as provided in this section, may affirm, annul or revise the objection or preliminary determination of the state road commissioner, or it may remand the proceeding to the state road commissioner for such further action as it directs.

(f) The decision of the circuit court on an appeal from the state road commissioner shall be final, subject only
AN ACT to amend and reenact article twenty-three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salvage yards.

Be it enacted by the Legislature of West Virginia:

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

Article 23. Salvage Yards.

Section 1. Definitions.—As used in this article:

2 "Salvage" shall mean old or scrap copper, brass, rope, rags, batteries, paper, rubber, junked, dismantled or wrecked automobiles or parts thereof, iron, steel and other old or scrap ferrous or nonferrous materials.

6 "Salvage yard" shall mean an establishment or place of business which is maintained or operated for the use of storing, keeping, buying or selling such salvage, or for the maintenance or operation of an automobile graveyard.

10 "Person" shall include an individual, partnership, association or corporation.
“Fence” shall mean an enclosure at least six feet in height so constructed or planted and maintained as to obscure the salvage in said enclosure from ordinary view to those persons passing upon the public highways in this state.

“Commissioner” shall mean the state road commissioner of West Virginia.

Sec. 2. License Required; Restrictions as to Location; Existing Salvage Yards.—No salvage yard shall be operated or maintained outside a municipality without a license and no license shall be granted a person who maintains a salvage yard outside a municipality within one thousand feet of any primary or interstate highway. If a salvage yard is operated or maintained within three hundred feet of any secondary highway the view thereof from such highway shall be obscured by natural objects or a fence as herein defined: Provided, however, That a person who was maintaining or operating a salvage yard prior to January one, one thousand nine hundred fifty-nine, outside a municipality shall be granted a license if his salvage yard is operated or maintained adjoining any primary, interstate or secondary highway right-of-way and the view from such highway is obscured by natural objects, plantings or a fence on his property line as herein defined: Provided further, That the provisions hereof shall not be construed to permit any person who operated or maintained a salvage yard prior to January one, one thousand nine hundred fifty-nine, to enlarge, expand or increase the size of said salvage yard.

Sec. 3. Issuance of License; Fee; Term; Renewal; Disposition of Fees.—The commissioner shall have the sole authority to issue licenses for the establishment, maintenance and operation of salvage yards within the limits herein defined and shall charge therefor a fee of fifty dollars payable annually in advance. All licenses issued under this section shall expire on the first day of January following the day of issue. A license may be renewed from year to year upon paying the commissioner the sum of fifty dollars for each such renewal. All license fees col-
Sec. 4. Requirements as to Fences; Rules and Regulations.—A fence constructed under this article shall be kept in good order and repair and at all times painted and no advertisement shall be permitted thereon other than the name of the person in whose name the license has been issued and the nature of the business conducted therein. The commissioner shall have the power to promulgate rules and regulations governing the location, construction, planting and maintenance of fences, living or otherwise.

Sec. 5. Penalties; Injunction.—Any person violating any provision of this article, whether as principal or employee, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be penalized by a fine of not less than one hundred dollars or more than one thousand dollars; and such person shall be guilty of a separate offense for each month during a portion of which any violation of this article is committed, continued or permitted, and, in addition to other remedies provided in this chapter, the state road commissioner or the county court of the county in which such salvage yard is located may apply to the circuit court, or other court of competent jurisdiction of the county in which said salvage yard may be, for an injunction to abate such nuisance.

Sec. 6. Date of Enforcement.—The provisions of this article shall be enforceable from the effective date thereof, except that the license provided for in section three hereof shall not be required until the first day of January, one thousand nine hundred sixty-four.

Sec. 7. Reference to Other Statutes.—The provisions of chapter eleven, article twelve, section seven, and chapter eleven, article thirteen-a, of this code shall not apply to salvage yards covered by the provisions of this article.
AN ACT to amend and reenact section three, article twenty-four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers and duties of the West Virginia historic commission.

Be it enacted by the Legislature of West Virginia:

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

Article 24. West Virginia Historic Commission.

Section 3. Powers and duties of commission; assistance of state road commission; acceptance of gifts, donations, contributions, bequests or devises.

Section 3. Powers and Duties of Commission; Assistance of State Road Commission; Acceptance of Gifts, Donations, Contributions, Bequests or Devises.—The commission shall be authorized and empowered to purchase new road markers, replace old road markers, protect, preserve and display the Fairfax stones, purchase markers for new highways, and, with the consent of the West Virginia turnpike commission, for the West Virginia turnpike; and formulate and write appropriate copy for such markers. The commission is authorized to purchase markers from any commercial company dealing in or manufacturing such markers. The commission shall choose the location of such historic road markers, and the state road commission shall have the responsibility for the actual physical placement and repainting thereof. The cost of such placement and repainting shall be paid out of the appropriation of the commission.

The commission shall also be authorized and empowered, acting through its executive officer and with
the consent of the governor, to accept and receive gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, or any interest in such property, and said commission may accept, receive and administer same subject to any terms, limitations or restrictions placed thereupon by the donor.

CHAPTER 165

(House Bill No. 40—By Mr. Speaker, Mr. Singleton, and Mr. Pauley)

[Passed March 8, 1963; in effect July 1, 1963. Approved by the Governor.]

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 revenues sufficient to pay semiannually the interest on such bonds and the principal thereof within twenty-five years.

Be it enacted by the Legislature of West Virginia:

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.
Section 1. Road Bonds; Amount; When May Issue.—Bonds of the state of West Virginia of the par value of ten million dollars are hereby authorized to be issued and sold for the purpose of raising funds for assisting in building, constructing and maintaining the system of roads and highways provided for by the constitution. Such bonds may be issued by the governor in such amounts, in coupon or registered form, in such denominations, at such times and bearing such date or dates as the governor may determine, and shall become due and payable serially in equal amounts beginning one year and ending twenty-five years from the date thereof: Provided, however, That no bonds may be issued under the provisions of this act until bonds authorized and issued under the provisions of the "Good Roads Amendment" to the constitution of the state, ratified at the general election held in November, one thousand nine hundred twenty, have been retired and canceled out of the state road sinking fund created by section six, chapter one hundred thirteen, acts of the Legislature of West Virginia, one thousand nine hundred twenty-one, in an amount equal to or greater than the amount to be issued hereunder at any one time.

Sec. 2. Transfer Fee; Registration Fee; Where Payable; Interest Rate; Tax Exempt.—The auditor and the treasurer are hereby authorized to arrange for the transfer of registered bonds, and for each such transfer a fee of fifty cents shall be charged by and paid to the state of West Virginia, to the credit of the state road sinking fund. Bonds taken in exchange shall be canceled by the auditor and treasurer and be carefully preserved by the treasurer. The treasurer shall make provisions for registering "payable to bearer" bonds, and for each bond registered a fee of fifty cents shall likewise be charged by and paid to the state of West Virginia, to the credit of the state road sinking fund. All such bonds shall be payable at the office of the treasurer of the state of West Virginia, or, at the option of the holder, at some bank in the city of New York to be designated by the governor. The bonds shall bear interest at a rate not exceeding four and one-half percent per annum, payable semi-
annually, on the first day of ____________________________, and
the first day of ____________________________, of each year, to
bearer, at the office of the treasurer of the state of West
Virginia, at the capitol of the state, or at the bank desig-
nated by the governor, upon presentation and surrender
of interest coupons, then due, in the case of coupon bonds.
In the case of registered bonds the treasurer of the state
of West Virginia shall issue his check for the interest
then due on the first day of ____________________________, and
__________________________ of each year, and mail it to the
registered owner at the address as shown by the record
of registration. Both the principal and interest of the
bonds shall be payable in lawful money of the United
States of America and the bonds shall be exempt from
taxation by the state of West Virginia, or by any county,
district, or municipality thereof, which facts shall appear
on the face of the bonds as part of the contract with the
holder thereof.

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

COUPON ROAD BOND
(Or registered road bond, as the case may be)
OF THE
STATE OF WEST VIRGINIA

The state of West Virginia, under and by virtue of
authority of an act of the Legislature passed at the regular
session of one thousand nine hundred sixty-three, on
the __________ day of ____________________________, one thousand
nine hundred sixty-three, and approved by the governor
on the __________ day of ____________________________, one thou-
sand nine hundred sixty-three, which is hereby made a
part hereof as fully as if set forth at length herein,
acknowledges itself to be indebted to and hereby promises
to pay to the bearer hereof (in the case of a coupon bond)
or to ........................................ or assigns (the owner of
record, in case of registered bonds) on the .......... day
of ........................................, 19......, in lawful money of the
United States of America at the office of the treasurer
of the state of West Virginia at the capitol of said state,
or at the option of the holder at ........................ bank
in the city of New York, the sum of ...................... dollars, with interest thereon at .............. percentum per
annum from the date, payable semiannually in like lawful
money of the United States of America at the treasurer's
office or bank aforesaid, on the first day of .................
and the first day of .............. of each year, (and
in the case of coupon bonds) according to the tenor of
the annexed coupons bearing the engraved facsimile
signature of the treasurer of the state of West Virginia,
upon surrender of such coupons. This bond (in case of a
coupon bond) may be exchanged for a registered bond of
like tenor upon application to the treasurer of the state
of West Virginia.

To secure the payment of this bond, principal sum and
interest, when other funds and revenues sufficient are
not available for that purpose, it is agreed that within
the limits prescribed by the constitution, the board of
public works of the state of West Virginia shall annually
cause to be levied and collected an annual state tax on
all property in the state, until this bond is fully paid,
sufficient to pay the annual interest on this bond and the
principal sum thereof within the time this bond becomes
due and payable.

This bond is hereby made exempt from any taxation
by the state of West Virginia, or by any county, district,
or municipal corporation thereof.

In testimony whereof, witness the signature of the
treasurer of the state of West Virginia, and the counter-
signature of the auditor of the state, hereto affixed accord-
ing to law, dated the .......... day of ................. ,
one thousand nine hundred ...................... ,
and the seal of the state of West Virginia.

(SEAL)

Treasurer of the State of West Virginia
Sec. 4. Form of Coupon.—The form of coupon shall be substantially as follows, to wit:

STATE OF WEST VIRGINIA

Bond No. .................................... Coupon No. ....................................

On the first day of ______________________, 19 ______, the state of West Virginia will pay to the bearer, in lawful money of the United States of America, at the office of the treasurer of the state, or at the option of the holder at _________ bank in the city of New York, the sum of ___________________________ dollars, the same being semiannual interest on Road Bond No. ..................

Treasurer of the State of West Virginia

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

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

Sec. 6. State Road Sinking Fund Sources Used to Pay Bonds and Interest; Investment of Remainder.—Into the state road sinking fund there shall be paid all moneys received from the annual state tax levy on the taxable property in the state levied under the provisions of this act, from any and all appropriations made by the state
from other sources for the purpose of paying the interest
on such bonds or paying off and retiring the bonds, from
fines, forfeitures and penalties, if any, made applicable by
law for the payment of such bonds or the interest thereon,
from transfer fees as herein provided, and from any source
whatever, which is made liable by law for the payment
of the principal of such bonds or the interest thereon.

All such funds shall be kept by the treasurer in a
separate account, under the designation aforesaid, and
all money belonging to the fund shall be deposited in
the state treasury to the credit thereof.

Such fund shall be applied by the treasurer of the
state first to the payment of the semiannual interest on
such bonds as it shall become due as herein provided. The
remainder of the fund shall be turned over by the state
treasurer to the state sinking fund commission, whose
duty it shall be to invest the same in bonds of the gov-
ernment of the United States, bonds of the State of West
Virginia, or any political subdivision thereof: Provided,
however, That bonds so purchased by the state sinking
fund commission shall mature so as to provide sufficient
money to pay off all bonds herein provided to be issued
as they become due; and the money so paid into the
state road sinking fund under the provisions of this act
shall be expended for the purpose of paying the interest
and principal of the bonds hereby provided for as they
severally become due and payable and for no other pur-
pose except that the fund may be invested until needed,
as herein provided.

Sec. 7. Tax Levy to Pay, unless other Funds Available.
—In order to provide the revenue necessary for the pay-
ment of the principal and interest of such bonds, as here-
before provided, the board of public works, within the
limits prescribed by the constitution, is authorized, em-
powered and directed to lay annually a tax upon all real
and personal property subject to taxation within this
state, sufficient to pay interest on the bonds accruing dur-
ing the current year and one twenty-fifth of the total
issue (at par value) of such bonds, for such number of
years, not exceeding twenty-five, as may be necessary to
pay the interest thereon and to pay off the principal sum
of the bonds; and such taxes, when so collected, shall not
be liable for or applicable to any other purpose: Pro-
vided, however, That if there be other funds in the state
treasury, or in the state road funds, in any fiscal year,
not otherwise appropriated, or if other sources of revenue
be hereafter provided by law for the purpose, the board
of public works is authorized, empowered and directed to
set apart, in any year there be such funds, or other sources
of revenue provided for such purpose, a sum sufficient to
pay the interest on bonds accruing during the current
year, and to pay off, and retire the principal of such
bonds, or any part thereof, at maturity.

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

Sec. 8. Sale by Governor; Minimum Price.—The
governor shall sell the bonds herein mentioned at such
time or times as he may determine necessary to provide
funds for road construction and maintenance purposes,
as herein provided, upon recommendation of the state
road commissioner. All sales shall be at not less than
par and accrued interest. All interest coupons becoming
payable prior to the sale date shall be cancelled by the
treasurer and rendered ineffective, before the delivery
of the bonds so sold.

Sec. 9. Proceeds Paid into State Road Fund.—The
proceeds of all sales of bonds herein authorized shall
be paid into the state road fund created by section one,
article three, chapter seventeen of the code of West
Virginia, one thousand nine hundred thirty-one, as last
amended.

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

Sec. 11. Auditor to Be Custodian of Unsold Bonds.—
The state auditor shall be the custodian of all unsold
bonds issued pursuant to the provisions of this act.
Sec. 12. Interim Certificates.—The governor may authorize the issuance of interim certificates to be issued to the purchasers of such bonds to be held by them in lieu of engraved bonds. When interim certificates are so issued, they shall become full and legal obligations of the state of West Virginia under all of the provisions of this act just as fully and completely as the engraved and permanent bonds.

Sec. 13. Payment of Expenses.—All necessary expenses incurred in the execution of this act shall be paid out of the state road fund on warrants of the auditor of the state drawn on the state treasurer.

CHAPTER 166
(Senate Bill No. 283—By Mr. Carson, Mr. President)

[Passed March 8, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to filing in the office of the secretary of state of rules adopted by agencies of the state of West Virginia.

Be it enacted by the Legislature of West Virginia:

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

Article 2. Secretary of State.

Section 3. Filing of rules of state agencies in the office of the secretary of state.

Section 3. Filing of Rules of State Agencies in the Office of the Secretary of State.—Each state agency shall compile and index all of its lawfully adopted rules which are in force on the effective date of this section and shall file in the office of the secretary of state two certified copies of such compilation and index. If any agency
shall fail to file such certified copies on or before January
one, one thousand nine hundred sixty-four, then the rules
of such agency which are not so filed shall become void
and unenforceable and shall be of no legal force and
effect. Each rule, amendment, modification or repeal of
a rule lawfully adopted by any agency after the effective
date of this section, shall neither be enforced nor en-
forceable unless and until two certified copies of such
rule, amendment, modification or repeal of a rule have
been on file in the office of the secretary of state for sixty
consecutive days. It shall be the duty of the secretary of
state to keep such rules filed in his office in a manner
which shall be available and convenient for public in-
spection. The secretary of state shall prescribe by rule
a standard size, format and numbering system for rules
to be filed in his office, making exceptions where rules
issued by other agencies cannot effectively convey neces-
sary information within such size and format. Rules pert-
taining to the size, format and numbering system issued
by the secretary of state under the authority of this sec-
tion may be amended from time to time and any such rule
or amendment thereof shall become effective sixty days
after such rule or amendment has been filed. The secre-
tary of state may refuse to accept for filing any rules
which do not comply with this section or with rules issued
by the secretary under authority of this section.

For the purpose of this section “agency” means any au-
authority, department, commission, board or officer of the
government of the state of West Virginia authorized by
law to make rules, but this section shall not apply to the
Legislature or to the courts of the state of West Virginia.
The word “rule” includes every regulation, standard, or
statement of policy or interpretation of general applica-
tion and future effect, including the amendment or repeal
thereof adopted by any agency, as herein defined, to im-
plement or make specific the law enforced by or ad-
ministered by it, or to govern its organization or proce-
dure, but does not include regulations concerning only
the internal management of the agency and not directly
affecting the rights of or procedures available to the
public.
AN ACT to amend and reenact sections five, six, eight, twelve and twenty-eight, article one, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article one by adding thereto a new section, designated section twenty-nine, all relating to registration of securities.

Be it enacted by the Legislature of West Virginia:

That sections five, six, eight, twelve and twenty-eight, article one, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article one be further amended by adding thereto a new section, designated section twenty-nine, all to read as follows:

Article I. Securities; Definitions; Registration; Unlawful Acts; Penalties; Liabilities.

Section 5. Necessity of Registration by Qualification; Register of Securities.

No securities except of a class exempt under a provision of section three hereof or unless sold in any transaction exempt under a provision of section four hereof shall be sold within this state unless such securities shall have been registered by qualification as hereinafter defined or the sale thereof authorized under section twenty-eight of this article.

A record of the registration of securities shall be kept in a register of securities to be kept in the office of the commissioner, in which register of securities shall also be recorded any order entered by the commissioner with respect to such securities. Such register and all informa-
Sec. 6. Manner of Registration by Qualification.—All securities required by this article to be registered before being sold in this state, shall be registered only by qualification in the manner provided by this section, except those securities authorized for sale under section twenty-eight of this article.

The commissioner shall receive and act upon applications to have securities registered by qualification, and may prescribe forms on which he may require such application to be submitted. Applications shall be in writing and shall be duly signed by applicant and sworn to by any person having knowledge of the facts, and filed in the office of the commissioner and may be made either by the issuer of the securities for which registration is applied or by any registered dealer desiring to sell the same within the state.

The commissioner may require the applicant to submit to him the following information respecting the issuer or the security or the person or persons obligated by such security, and such other information as he may deem necessary to enable him to ascertain whether such securities shall be registered pursuant to the provisions of this section:

(a) The name under which the issuer is doing or intends to do business;

(b) The name of the state or other sovereign power under which the issuer is organized;

(c) The location of the issuer's principal business office, and if the issuer is a foreign or territorial person, the name and address of its agents in the United States authorized to receive notices;

(d) The names and addresses of the directors or persons performing similar functions, and the chief executive, financial and accounting officers chosen or to be chosen if the issuer be a corporation, association, trust or other entity, of all partners, if the issuer be a partnership, and of the issuer, if the issuer be an individual, and of the promoters in the case of a business to be formed,
or formed within two years prior to the filing of the application;

(e) Names and addresses of the underwriters;

(f) The names and addresses of all persons, if any, owning of record or beneficially, if known, more than ten per cent of any class of stock of the issuer or more than ten per cent in the aggregate of the outstanding stock of the issuer as of a date within twenty days prior to the filing of the application;

(g) The amount of securities of the issuer held by any person specified in subsections (d), (e) and (f) of this section, as of a date within twenty days prior to the filing of the application, and, if possible, as of one year prior thereto, and the amount of the securities, for which the application is filed, to which such persons have indicated their intention to subscribe;

(h) The general character of the business actually transacted or to be transacted by the issuer;

(i) A statement of the capitalization of the issuer, including the authorized and outstanding amounts of its capital stock and the proportion thereof paid up, the number of classes of shares in which such capital stock is divided, par value thereof, or, if it has no par value, the stated or assigned value thereof, a description of the respective voting rights, preferences, conversion and exchange rights, rights to dividends, profits, or capital of each class, with respect to each other class, including the retirement and liquidation rights or values thereof;

(j) A statement of the securities, if any, covered by options outstanding or to be created in connection with the securities to be offered;

(k) The amount of capital stock of each class issued or included in the shares of stock to be offered;

(l) The amount of funded debt outstanding and to be created by the securities to be offered and a description of such;

(m) The specific purposes, in detail, and the approximate amounts to be devoted to such purposes so far as determinable, for which the securities to be offered are to supply funds, and if the funds are to be raised in part
from other sources the amounts thereof and the sources thereof shall be stated;
(n) The remuneration, paid or estimated to be paid, by the issuer or its predecessors, directly or indirectly during the past year, and ensuing year, to all officers and directors and to any other individuals if required by the commis-
(s) The dates of and parties to, and the general ef-
(t) A detailed balance sheet as of a date not more than ninety days prior to the date of the filing of the application, and in the case of a new corporation or organization a pro forma balance sheet shall be submitted
showing what the conditions of the company will be after
the financing is completed and as of a date when the com-
pany begins business as authorized by its charter. Addi-
tional details and information regarding any item or
items in the balance sheet shall be submitted as prescribed
by the commissioner. There shall also be submitted a
profit and loss statement of the issuer showing earnings
and income, the nature and source thereof, and the ex-
penses and fixed charges in such detail and such form
as the commissioner shall prescribe, giving an estimated
profit and loss statement for a new company or organi-
ization;
(u) A copy of any agreement or agreements made
or to be made, including contracts or options, effec-
tive at the time of registration or at some future
date if such are in connection with, refer to or are
material to the sale of securities, (no public disclos-
ure shall be required of any portion of any such con-
tracts or agreements if the commissioner determines
that the disclosure of such portion would impair the
value of the contract or agreement and would not
be necessary for the protection of the investors), a
copy of the articles of incorporation with all amend-
ments thereof and of the existing by-laws or instru-
ments corresponding thereto, whatever the name, if
the issuer be a corporation, a copy of all instru-
ments by which the trust is created or declared, if
the issuer is a trust, a copy of the articles of part-
nership or association and all other papers pertain-
ing to its organization, if the issuer is a partnership,
unincorporated association, joint stock company, or any
other form of organization;
(v) A detailed statement prescribed by the commis-
sioner of all individuals who are officers or who are em-
ployed as promoters by the issuer, underwriter or dealer
in securities;
(w) A copy of prospectus;
(x) Any other information as required and prescribed
by the commissioner as he may deem necessary and per-
tinent in determining whether the applicant or issuer
shall be registered pursuant to the provisions of this section.

All of the statements, exhibits and documents of every kind required by the commissioner under this section, except properly certified public documents, shall be verified by the oath of the applicant or of the issuer in such manner and form as may be prescribed by the commissioner.

The commissioner shall have power and authority to place such conditions, limitations and restrictions on any registration as may be necessary to carry out the purposes of this chapter.

The commissioner may require the use of a prospectus by registered issuer and may require the printing therein of all or any parts of the information required by this section to be submitted with the application and may designate by ruling how such prospectus may be used. Every prospectus used, distributed or made available in this state must first have the approval of the commissioner.

At the time of filing of application the applicant shall pay to the commissioner one twentieth of one per cent of the aggregate par value or offering price, whichever is greater, of the securities to be sold in this state for which the applicant is seeking registration, but in no case shall such fees be less than fifty dollars, except that the minimum fee for each oil and gas well registration shall be twenty-five dollars. In case of a stock having no par value, the offering price to the public shall be deemed to be the par value of such stock. When an application is denied, the commissioner shall retain the registration fee deposited.

If, upon examination of any application, the commissioner shall find that the sale of the security referred to therein will not be fraudulent or will not work or tend to work a fraud upon the purchaser, or that the enterprise or business of the issuer is not based upon unsound business principles and that it is in every respect equitable, just and fair to the investor and after all provisions of this article have been complied with, the com-
Securities

missioner shall record the registration of such security in the register of securities and thereupon such security so registered may be sold by the issuer or by any registered dealer who has notified the commissioner of his intention to do so, in the manner hereinafter provided, subject, however, to the further order of the commissioner as hereinafter provided.

Every registration under this section shall expire on the thirtieth day of June in each year, but new registrations for the succeeding year shall be issued upon written application, the applicant furnishing the commissioner, upon request, information as hereinbefore provided in this section, and by paying to the commissioner a fee of one twentieth of one per cent of the aggregate par value or offering price, whichever is greater, of the securities to be sold in this state within the year authorized by registration, but in no case shall the fee be less than fifty dollars, except that the minimum fee for each oil and gas well registration shall be twenty-five dollars. Applications for renewals must be made not less than thirty days before the first day of the ensuing registration year, otherwise they shall be treated as original applications.

Each different type, class, series or kind of securities not exempt by sections three and four of this article shall require separate registration and the same requirements and regulations shall apply to each, and the registration fee paid by each. This does not apply to a serial issue of securities where the entire amount is issued at one time and where the only difference is in the maturity or interest date.

Investment trust securities shall be registered separately as herein provided where there is any change or difference from the registered security other than the maturity date of the trust.

Sec. 8. Limitation of Sale Price and Commissions.—The commissioner may limit the price at which securities, to be registered under section six hereof, either of par or no par value, may be sold, and may prescribe the amount of commission to be allowed on such sales, but said com-
mission shall in no instance exceed twenty per cent of the
sale price, such percentage to include all expenses incident-
tal to such sale including advertising or any other expense
chargeable in any way to the sale of such securities. In no
instance shall commissions be paid on the aggregate sub-
scription or sales price, except to the extent of payments
actually made thereon: Provided, however, That this pro-
vision shall not apply to any security registered with the
securities and exchange commission under the invest-
ment company act of 1940.

Sec. 12. Dealer and Salesman Registered; Process;
Fees.—No dealer or salesman shall engage in business in
this state as such dealer or salesman or sell any securities,
including securities exempted in section three of this
article, or transact a brokerage or trading business or
do a business of buying or selling securities listed or
traded in on any stock exchange, except in transactions
exempt under section four of this article, unless he has
been registered as a dealer or salesman in the office
of the commissioner pursuant to the provisions of this
section.

An application for registration as a dealer shall be
filed in writing with the commissioner, in such form as
he may prescribe, duly verified by oath, which shall
state the principal office of the applicant, wherever situ-
ated, and the location of the principal office and all branch
offices in this state, if any, the name or style of doing
business, the names, residences and business addresses of
all persons interested in the business as principals, co-
partners, officers and directors, specifying as to each his
capacity and title, the general plan and character of busi-
ness and the length of time the dealer has been engaged
in business, a financial statement in detail showing the ac-
tual conditions of the dealer, classification and condition
of all margin or installment accounts, partner, officer and
director accounts, a list of securities sold in West Virginia
during the preceding year and so far as possible, a list
of those to be sold or offered for sale when the registra-
tion is completed, and such information to be given in
such detail as the commissioner may require. The com-
missioner may also require such additional information
as to applicant's previous history, record and association, in business of the applicant. The commissioner may re-
quire every applicant for registration as a salesman to pass a written examination as a requirement for issuance of said license. Every applicant for registration as a salesman shall have reached the age of twenty-one years, and shall not, at the time of examination, be employed by any securities dealer other than the one by whom he was employed at the time of making application.

Every dealer, at the time of filing his application, shall file with the commissioner of securities his irrevo-
cable written consent to service of process as prescribed by section nine of this article.

If the commissioner shall find that the applicant is of good repute, has furnished sufficient proof of financial responsibility, and has complied with the provisions of this section including the payment of the fee hereinafter provided, he may register such applicant as a dealer.

Upon written application of a registered dealer and payment of the proper fees, the commissioner may regis-
ter as salesmen of such dealer such natural persons as shall appear to the commissioner to be qualified and of good character.

The partners of a partnership and the executive officers of a corporation or other association registered as a dealer may act as salesmen during such time as such partnership, corporation or association is so registered without further registration as salesmen. The salesmen registered by a dealer may sell any securities for which the dealer regis-
tering such salesmen is registered.

The names and addresses of all persons approved for registration as dealers or salesmen and all orders with respect thereto shall be recorded in a register of dealers and salesmen, which shall be open to public inspection.

Every registration under this section shall expire on the thirtieth day of June in each year, but new registrations for the succeeding year shall be issued upon written ap-
plication and upon payment of the fee as hereinafter pro-
vided, and by filing of further statements or furnishing
any further information specifically required by the commissioner. Applications for renewals must be made not less than thirty days before the first day of the ensuing year, otherwise they shall be treated as original applications. The fee for each dealer's registration and for each dealer's annual renewal shall be one hundred dollars. The fee for each salesman's registration shall be twenty dollars, and the fee for each salesman's annual renewal shall be ten dollars. When an application is denied, the commissioner shall retain the registration or renewal fee deposited.

Changes in registration occasioned by changes in personnel of a partnership or in the principals, co-partners, officers or directors of any dealer may be made from time to time by written application setting forth the facts with respect to such change.

Every dealer registered under this section shall be subject to examination as to his financial condition or methods of business by the commissioner or by his duly authorized representative at the time the commissioner may deem it advisable. The expense of the examination shall be paid by the applicant and the failure or refusal of such applicant to pay such expense upon the demand of the commissioner shall work a forfeiture of his right to registration under this section.

Every dealer or salesman shall send a copy of all bills, confirmations or orders on transactions with any employee or active official of any bank, trust company or savings institution, to the president of the institution by which the person is employed or in which the person is an official, and a copy shall also be sent to the commissioner of banking of the state of West Virginia. These copies of bills, confirmations or orders shall be sent at the same time as the original. Any dealer or salesman wilfully violating the provisions of this paragraph shall have his registration revoked by the commissioner and may be liable to such bank, trust company or savings institution for any losses or damages incurred in any case where such dealer or salesman failed to comply with this provision.

This section shall not apply to a person or his agent sell-
ing exclusively his own contracts, if such contracts are exempt from this chapter by section three, subdivision (g) of this article.
This section shall not apply to an unincorporated person selling exclusively undivided interest in oil, gas or other mineral rights if such unincorporated person is the bona fide owner of the lease, interest, royalty or property in which he is selling interests.

Sec. 28. Sales in Over-the-Counter Transactions.—Any security, as defined in this article, which has been previously but is not now registered by qualification pursuant to this article, may, in the discretion of the commissioner, be offered and sold by registered dealers in an over-the-counter transaction. The commissioner shall regulate the offering and sale of all such securities and shall register dealers to buy, sell, trade or otherwise deal in such securities. The commissioner shall promulgate rules and regulations to provide for the registration of dealers and for the regulation of over-the-counter transactions in securities.
All dealers, registered pursuant to this section, shall be registered pursuant to section twelve of this article and shall pay the fees set forth for dealers in said section.

Sec. 29. How Chapter Cited.—This chapter may be cited as “The Act Regulating and Supervising the Sale of Securities”.

CHAPTER 168

(Senate Bill No. 86—By Mr. Carrigan and Mr. Smith)

[Passed March 2, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen, article seven-a, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to small loan companies.
Be it enacted by the Legislature of West Virginia:

That sections one, twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen, article seven-a, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

Article 7-a. Small Loans.

Section 1. When license necessary to make loans at greater rate than six per cent.

12. Advertising by licensee; liens on realty as security; where business conducted; confession of judgment; what notes, etc., to contain; renegotiation, etc., of loan to borrower receiving discharge in bankruptcy.

13. Interest; other charges prohibited.

14. Duties of licensee to borrower.

15. Interest when loan is in excess of eight hundred dollars.

16. Credit life insurance.

17. Assignment of wages prohibited; when lien on household furniture not valid.

18. Interest on loans of less than eight hundred dollars.

Section 1. When License Necessary to Make Loans at Greater Rate Than Six Per Cent.—No person, copartnership, association or corporation shall engage in the business of making loans of money, credit, goods, or things in action in the amount or of the value of eight hundred dollars or less and charge, contract for, or receive on any such loan a greater rate of interest, discount, or consideration therefor than six per cent per annum except as authorized by this article and without first obtaining a license from the commissioner of banking of the state of West Virginia, hereinafter called the commissioner.

Sec. 12. Advertising by Licensee; Liens on Realty as Security; Where Business Conducted; Confession of Judgment; What Notes, etc., to Contain; Renegotiation, etc., of Loan to Borrower Receiving Discharge in Bankruptcy.—No licensee or other person, copartnership, association, or corporation shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed or broadcasted, in any manner whatsoever any statement or representation with regard to the rates, terms, or conditions for the loaning of money, credit, goods, or things in action in the amount or of the value of eight hundred dollars or less, which is false, misleading, or deceptive.
The commissioner may order any licensee to desist from any conduct which he shall find to be a violation of the foregoing provisions.

No licensee shall take a lien upon real estate as security for any loan under the provisions of this article, except such lien as is created by law upon the recording of a judgment.

No licensee shall conduct the business of making loans under the provisions of this article within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the commissioner upon his finding that the character of such other business is such that the granting of such authority would not facilitate evasions of this article or of the rules and regulations lawfully made hereunder, except nothing herein shall prohibit the licensee from purchasing installment sales contracts.

No licensee shall transact such business or make any loan provided for by this article under any other name or at any other place of business than that named in the license.

No licensee shall take any confession of judgment or any power of attorney. No licensee shall take any note, promise to pay, or security that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of interest or charge, nor any instrument in which blanks are left to be filled in after execution.

It shall be unlawful for any licensee to renegotiate the original loan, or any part thereof, or make a new contract covering the original loan, or any part thereof, with any borrower, who has received a discharge in bankruptcy of the original loan or any balance due thereon at the time of said discharge from any court of the United States of America exercising jurisdiction in insolvency and bankruptcy matters, unless said licensee shall pay to and deliver to the borrower the full amount of the loan shown on said note, promise to pay, or security, less any deductions for charges herein specifically authorized. Any
violation hereof shall be grounds for suspension or revocation of the license of the licensee by the commissioner of banking.

Sec. 13. Interest; Other Charges Prohibited.—Division A. Every licensee hereunder may loan any sum of money not exceeding eight hundred dollars in amount and may charge, contract for, and receive thereon interest at a rate not exceeding three per centum per month on the first two hundred dollars of any loan, or the remaining balance thereof, two per centum per month on the excess of two hundred dollars to six hundred dollars of any loan, or the remaining balance thereof, and one and one-half per centum per month on the excess of six hundred dollars to eight hundred dollars of any loan or the remaining balance thereof.

No amount whatsoever shall be paid, deducted, or received in advance. Interest shall not be compounded and shall be computed only on unpaid principal balances.

In addition to the interest herein provided for no further or other charge or amount whatsoever for any examination, service, brokerage, commission, expense, fee, or bonus or other thing or otherwise, except credit life insurance premiums as hereinafter provided for in section sixteen of this article, shall be directly or indirectly charged, contracted for, or received. If any interest, consideration or charges, in excess of those permitted by this article, are charged, contracted for, or received, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, interest, or charges whatsoever.

Division B. In lieu of computing and collecting interest as provided in division A of this section, a licensee may contract for and receive charges, on any loan not exceeding eight hundred dollars, exclusive of such charges, under a contract which requires the combined total of the original principal amount of the loan and the charges for payment according to schedule to be paid in substantially equal successive monthly installments as follows:

(1) The loan charges may be computed, when the loan is made, on the original principal amount of the loan (ex-
cluding the charges) for the full term of the contract without regard to the requirement for installment payments, at rates not exceeding the equivalent of nineteen dollars per one hundred dollars per year for that part of any original principal amount not exceeding two hundred dollars; sixteen dollars per one hundred dollars per year for that part of the original principal amount exceeding two hundred dollars, but not exceeding six hundred dollars, and twelve dollars per one hundred dollars per year for that part of the original principal amount exceeding six hundred dollars but not exceeding eight hundred dollars. Such charges shall be added to the cash advanced and the resulting sum shall be the amount of the loan obligation.

(2) For the purpose of computations under this section, whether at the maximum rate or less, a month shall be that period of time from any date in a month to the corresponding date in the next month and if there is no such corresponding date, then to the last day of such month and a day shall be considered one thirtieth of a month when such computation is made for a fraction of a month. The portion of the charges attributable to any particular monthly installment period, as originally scheduled or following a deferment, shall bear the same ratio to the total charges, excluding any adjustment made pursuant to subsection (3) hereof, as the balance scheduled to be outstanding during that monthly period bears to the sum of all monthly balances scheduled originally by the contract of loan.

(3) A licensee and borrower may agree that the first installment date may exceed one month by as much as fifteen days and the charge for each day exceeding one month shall be one thirtieth of the charge which would be earned for the first installment period of one month. The charge for extra days in the first installment period may be added to the first installment.

(4) If one half or more of any installment remains unpaid more than ten consecutive days (including Sundays and holidays) after it is due, the licensee may charge and collect a default charge not exceeding two cents for each one dollar of the scheduled installment. Such default charge shall not be charged more than once on a de-
If the payment of all wholly unpaid installments on which no default charge has been collected is deferred one or more full months, the licensee may charge and collect a deferment charge not exceeding two cents for each one dollar of the sum of the installment so deferred, multiplied by the number of months the maturity of the contract is extended: Provided, That such number of months shall not exceed the number of installments which are due and wholly unpaid or are to become due within fifteen days from the date of deferment. The deferment charge may be collected at the time of deferment or at any time thereafter. Any payment received at the time of deferment may be applied first to the deferment charge and the remainder, if any, applied to the unpaid balance of the contract: Provided, however, That if such payment is sufficient to pay, in addition to the appropriate deferment charge, any installment which is in default and the applicable default charge, it shall be first so applied and any such installment shall not be deferred or subject to deferment charge.

If the contract of loan is prepaid in full by cash, a new loan or otherwise, after the first scheduled installment payment date, the unearned portion of the charge for payment according to schedule, less any unpaid default or deferment charges, shall be rebated. No rebate shall be required for any partial prepayment. If judgment is obtained before the final installment payment date, the contract balance and the amount for which judgment can be entered shall be reduced by the amount of the rebate which would be required for prepayment in full as of the date judgment is obtained.

If two or more full installments are in default for one full month or more at any installment date and if the contract so provides, the licensee may reduce the contract balance by the rebate which would be required for prepayment in full on such installment date. Thereafter, in lieu of charging, collecting or receiving charges as pro-
vided in subsections (1) to (6) inclusive, of this division
B, charges may be charged, collected and received as pro-
vided by division A of this section, until the contract is
fully paid.

(8) If part or all of the consideration for a contract of
loan is the unpaid principal balance of a prior loan with
the same licensee, then the principal amount payable un-
der such new contract of loan shall not include any un-
paid charges on the prior loan except such charges which
have accrued within sixty days before the making of such
new contract of loan and may include the balance remain-
ing after giving the rebate required by subsection (6)
hereof.

Sec. 14. Duties of Licensee to Borrower.—Every li-
censee shall:

Deliver to the borrower at the time any loan is made
a statement upon which there shall be printed in the
English language a copy of division A, section thirteen, of
this article, if the loan is made under said division A, or a
statement upon which there shall be printed in the
English language a copy of division B, section thirteen, of
this article, if the loan is made under said division B, and
such statement shall show in clear and distinct terms the
amount and date of the loan and of its maturity, the
nature of the security, if any, for the loan, the name and
address of the borrower and of the licensee, the agreed
rate of interest or charges with the amount thereof and a
notice, if applicable, that default and deferment charges
may be made and the amount thereof;

Give to the borrower a receipt for all payments made
in cash on account of any such loan at the time such pay-
ments are made;

Permit payment to be made in advance in any amount
equal to one or more full installments on any contract of
loan at any time during the regular business hours of the
licensee, but the licensee may apply such payment first
to accrued charges and interest in full at the agreed rate
up to the date of such payment;

Upon repayment of the loan in full, mark indelibly
every obligation and security signed by the borrower with
the word “paid” or “cancelled”, and release any mortgage,
restore any pledge, and cancel and return any note given
to the licensee by the borrower.

Sec. 15. Interest When Loan Is in Excess of Eight Hundred
Dollars.—No licensee shall directly or indirectly
charge, contract for, or receive any interest, discount, or
consideration greater than six per cent per annum upon
the loan, use, or forbearance of money, goods, or things
in action, or upon the loan, use, or sale of credit, of the
amount or value of more than eight hundred dollars. The
foregoing prohibition shall also apply to any licensee who
permits any person, as borrower or as endorser, guaran-
tor, or surety for any borrower, or otherwise, to owe di-
gerectly or contingently, or both, to the licensee at any time
the sum of more than eight hundred dollars for principal.

Sec. 16. Credit Life Insurance.—Notwithstanding any
other provision of law, a licensee may request but shall
not require as security for a loan made pursuant to this
article insurance on the life of the borrower, or one of
them if there are two or more. The initial amount of such
insurance shall not exceed the total amount repayable un-
der the contract of loan and where the loan is repayable
in substantially equal installments the amount of insur-
ance shall at no time exceed the scheduled or actual
amount unpaid of the total amount payable by the bor-
rower to a licensee in accordance with the loan contract,
whichever is greater. The term of such insurance shall
not extend more than fifteen days beyond the scheduled
maturity date of the indebtedness. The premium or identi-
fiable charge for such insurance may be deducted from the
proceeds of any loan or may be included as part of the
principal. Such premium or identifiable charge shall not
be in excess of that filed by the insurance company with
the insurance commissioner. Any gain or benefit to the
licensee, directly or indirectly, from such insurance or the
sale or provision thereof shall not be deemed a violation
of any section of this article. No licensee shall require the
purchasing of such insurance as a condition precedent to
the making of a loan, and if the borrower elects to pur-
chase insurance the licensee shall not require the pur-
chasing of such insurance through a particular agent or
broker or from a particular insurance company.

Sec. 17. Assignment of Wages Prohibited; When Lien
on Household Furniture not Valid.—No licensee shall take
any assignment of, or order for payment of, any salary,
wages, commissions, or other compensation for services,
earned or to be earned, to secure any loan made by any
licensee under this article.

No chattel mortgage, trust deed or other lien on house-
hold furniture then in the possession and use of the bor-
rower, shall be valid unless it be in writing, signed in
person by the borrower, and if the borrower is married
unless it is signed in person by both husband and wife:
Provided, That the signature of both husband and wife
shall not be required when they have been living separate
and apart for a period of at least five months prior to the
making of such chattel mortgage, deed of trust or other
lien.

Sec. 18. Interest on Loans of Less Than Eight Hundred
Dollars.—No person, copartnership, association, or cor-
poration, except as authorized by this article, shall di-
rectly or indirectly charge, contract for, or receive any
interest, discount, or consideration greater than six per
cent per annum upon the loan, use, or forbearance of
money, goods, or things in action, or upon the loan, use,
or sale of credit of the amount or value of eight hundred
dollars or less.

The foregoing prohibition shall apply to any person,
copartnership, association, or corporation who or which,
by any device, subterfuge, or pretense whatsoever shall
charge, contract for, or receive greater interest, considera-
tion, or charges than is authorized by this article for any
such loan, use, or forbearance of money, goods, or things
in action or for any such loan, use, or sale of credit.

No loan of the amount or value of eight hundred dollars
or less for which a greater rate of interest, consideration,
or charges than is permitted by this article has been
charged, contracted for, or received, wherever made, shall
be enforced in this state and every person in anywise participating therein in this state shall be subject to the provisions of this article.

CHAPTER 169
(Com. Sub. for House Bill No. 276—Originating in the House Committee on Health)

[Passed March 1, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to amend and reenact section three, article seven, chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to Berkeley Springs sanitarium.

Be it enacted by the Legislature of West Virginia:

That section three, article seven, 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. Institutional fees; special sanitarium fund.

Section 3. Institutional Fees; Special Sanitarium Fund.
Patients shall be admitted to such institution for treatment upon payment of such fees as may be established by the state commissioner of public institutions, which fees shall be reasonable, but patients from this state shall be allowed free treatment if not pecuniarily able to pay same, under such reasonable regulations as the state commissioner of public institutions may prescribe.

There is hereby created a special fund which shall be known as the Berkeley Springs sanitarium fund to which fund shall be credited twenty-five per cent of the gross receipts collected from patients, not to exceed four thousand dollars. Such fund will be administered by the state commissioner of public institutions and shall be used for the purpose of promoting and advertising the facilities available at the sanitarium.
CHAPTER 170

(House Bill No. 246—By Mr. Schupbach and Mr. Barker)

[Passed February 28, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to repeal section three-a, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the salary of the warden of the West Virginia penitentiary.

Be it enacted by the Legislature of West Virginia:

Article 5. The Penitentiary.

Section 1. Repeal of section regarding salary of warden.

Section 1. Repeal of Section Regarding Salary of Warden.—Section three-a, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the salary of the warden of the West Virginia penitentiary, is hereby repealed.

CHAPTER 171

(Senate Bill No. 272—By Mr. Carson, Mr. President)

[Passed March 7, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authority of the state office building commission of West Virginia to issue revenue bonds, and particularly, increasing the lawful aggregate amount of all issues of bonds outstanding at one time from two million dollars to ten million dollars.

Be it enacted by the Legislature of West Virginia:

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


Section 7. Commission empowered to issue state office revenue bonds; grants and gifts.

Section 7. Commission Empowered to Issue State Office Revenue Bonds; Grants and Gifts.—The commission is hereby empowered to raise the cost of the project, as defined hereinabove, by the issuance of state office building revenue bonds of the state, the principal of and interest on which bonds shall be payable solely from the special fund herein provided for such payment. Such bonds shall be authorized by resolution of the commission which shall recite an estimate by the commission of such cost, and shall provide for the issuance of bonds in an amount sufficient, when sold as hereinafter provided, to produce such cost, less the amount of any grant or grants, gift or gifts received, or in the opinion of the commission expected to be received from the United States of America or from any other source. The acceptance by the commission of any and all such grants and gifts, whether in money or in land, labor or materials, is hereby expressly authorized. All such bonds shall have and are hereby declared to have all the qualities of negotiable instruments under the law merchant. Such bonds shall bear interest at not more than four per cent per annum, payable semiannually, and shall mature in not more than twenty-five years from their date or dates, and may be made redeemable at the option of the state, to be exercised by the commission, at such price and under such terms and conditions as the commission may fix prior to the issuance of such bonds. The commission shall determine the form of such bonds, including coupons to be attached thereto to evidence the right of interest payments, which bonds shall be signed by the chairman and secretary of the commission, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of said chairman of the commission. In case any of the officers whose signatures appear on the bonds or coupons shall
cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. The commission shall fix the denominations of said bonds, the principal and interest of which shall be payable at the office of the treasurer of the state of West Virginia, at the capitol of said state, or, at the option of the holder, at some bank or trust company in the city of New York to be named in the bonds in such medium as may be determined by the commission. The said bonds shall be exempt from taxation by the state of West Virginia, or any county or municipality therein. The commission may provide for the registration of such bonds in the name of the owner as to principal alone, and as to both principal and interest under such terms and conditions as the commission may determine, and shall sell such bonds in such manner as it may determine to be for the best interest of the state, taking into consideration the financial responsibility of the purchaser, and the terms and conditions of the purchase, and especially the availability of the proceeds of the bonds when required for payment of the cost of the project, such sale to be made at a price not lower than a price which, computed upon standard tables of bond values, will show a net return of four per cent per annum to the purchaser upon the amount paid therefor. The proceeds of such bonds shall be used solely for the payment of the cost of the project, and shall be deposited and checked out as provided by section four of this article, and under such further restrictions, if any, as the commission may provide. If the proceeds of such bonds, by error in calculation or otherwise, shall be less than the cost of the project, additional bonds may in like manner be issued to provide the amount of the deficiency, and unless otherwise provided for in the trust agreement hereinafter mentioned, shall be deemed to be of the same issue, and shall be entitled to payment from the same fund, without preference or priority as the bonds before issued, provided that the aggregate amount of all issues of bonds outstanding at one time shall not exceed ten million dollars. If the proceeds of bonds issued for the project shall ex-
ceed the cost thereof, the surplus shall be paid into the
fund hereinafter provided for payment of the principal
and interest of such bonds. Such fund may be used for
the purchase of any of the outstanding bonds payable
from such fund at the market price, but at not exceeding
the price, if any, at which such bonds shall in the same
year be redeemable, and all bonds redeemed or pur-
chased shall forthwith be cancelled, and shall not again
be issued. Prior to the preparation of definitive bonds,
the commission may, under like restrictions, issue tem-
porary bonds with or without coupons, exchangeable for
definitive bonds upon the issuance of the latter. Such
revenue bonds may be issued without any other proceed-
ings or the happenings of any other conditions or things
than those proceedings, conditions and things which are
specified and required by this article, or by the constitu-
tion of the state. Revenue bonds issued under the au-
thority herein granted shall be eligible as investments
for the workmen's compensation fund and as security for
the deposit of all public funds: Provided, however, That
no bonds or other obligations shall be issued or incurred
hereunder, and no contracts for erection of any new
project entered into by the commission, unless and until
the plans, specifications and location of any new or addi-
tional project shall be first submitted to the Legislature
for its approval.

CHAPTER 172
(Senate Bill No. 312—By Mr. Martin)

[Passed March 9, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to amend and reenact section two, article seven, chap-
ter six of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the compensa-
tion of certain state officers.

Be it enacted by the Legislature of West Virginia:
That section two, article seven, chapter six of the code of
West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**Article 7. Compensation and Allowances.**

Section 2. Salaries of certain state officers.

**Section 2. Salaries of Certain State Officers.**—Effective on and after the first Monday after the second Wednesday in January, one thousand nine hundred fifty-seven, the salary of the governor shall be seventeen thousand five hundred dollars per year.

The salary of the attorney general and superintendent of free schools shall each be twelve thousand dollars per year; the salary of the state auditor, secretary of state, state treasurer and the commissioner of agriculture shall each be eleven thousand dollars per year.

The salary of each of the judges of the supreme court of appeals shall be nineteen thousand dollars per year.

Such salaries shall be paid out of the state treasury.

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**CHAPTER 173**

(House Bill No. 36—By Mr. Speaker, Mr. Singleton, and Mr. Seibert)

[Passed March 9, 1963; in effect from passage. Approved by the Governor.]

AN ACT to repeal section eleven, article ten, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend article one, chapter five of the code, as amended, by adding thereto a new section, designated section twenty-two, relating to vacancies in appointive offices filled by the governor; senate action with respect thereto; the bonds required; and filling vacancies in other appointive offices.

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

That section eleven, article ten, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that article one, chapter five of the
code, as amended, be amended by adding thereto a new section, designated section twenty-two, to read as follows:

Article 1. The Governor.

Section

22. Vacancies in offices filled by appointment of governor; senate action; bond requirements; filling vacancies in other appointive offices.

Section 22. Vacancies in Offices Filled by Appointment of Governor; Senate Action; Bond Requirements; Filling Vacancies in Other Appointive Offices.—In case of a vacancy, during the recess of the senate, in any office, which vacancy the governor is authorized to fill by and with the advice and consent of the senate, the governor shall, by appointment, fill such vacancy until the next meeting of the senate, when the governor shall submit to the senate a nomination to fill such vacancy and, upon confirmation of such nomination by the senate, by a vote of a majority of all the members elected to the senate, taken by yeas and nays, the person so nominated and confirmed shall hold said office during the remainder of the term for which his predecessor in office was appointed, and until his successor shall be appointed and qualified. No person whose nomination for office has been rejected by the senate shall be again nominated for the same office during the session in which his nomination was so rejected, unless at the request of the senate, nor shall he be appointed to the same office during the recess of the senate. No appointee who resigns from any such office prior to confirmation, or whose name has not been submitted for confirmation while the senate is in session, shall be eligible, during the recess of the senate, to hold any office the nomination for which must be confirmed by the senate.

The bond, if any, required by law to be given by any officer so temporarily appointed by the governor, shall be in such penalty as is required by law of the incumbent of such office.

Any vacancy in any other office filled by appointment, or in any office hereafter created to be filled by appointment, shall be filled by the same person, court or body
AN ACT to amend and reenact section sixteen, article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increased levies by local levying bodies and the issuance of bonds thereunder.

Be it enacted by the Legislature of West Virginia:

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

Article 8. Levies.

Section 16. What order for election to increase levies to show; vote required; amount and continuation of additional levy; issuance of bonds.

Section 16. What Order for Election to Increase Levies to Show; Vote Required; Amount and Continuation of Additional Levy; Issuance of Bonds.—A local levying body may provide for an election to increase the levies, by entering on its record of proceedings an order setting forth:

(1) The purpose for which additional funds are needed;
(2) The amount for each purpose;
(3) The total amount;
(4) The separate and aggregate assessed valuation of each class of taxable property within its jurisdiction;
(5) The proposed additional rate of levy in cents on each class of property;
(6) The proposed number of years, not to exceed three, to which the additional levy shall apply, except that in the case of county boards of education the proposed number of years shall not exceed five;
(7) The fact that the local levying body will or will not issue bonds, as provided by this section, upon approval of the proposed increased levy.

The local levying body shall submit to the voters within their political subdivision, the question of the additional levy at either a general or special election. If at least sixty per cent of the voters cast their ballots in favor of the additional levy, the local levying body may impose the additional levy. This levy shall not exceed fifty per cent of the rates authorized in sections ten and fourteen of this article for county courts and municipalities, nor one hundred per cent of the rates authorized in section twelve of this article for county boards of education, as the case may be.

Levies authorized by this section shall not continue for more than three years in the case of county courts and municipalities and five years in the case of county boards of education without resubmission to the voters.

Upon approval of an increased levy as provided by this section, a local levying body may immediately issue bonds in an amount not exceeding the amount of the increased levy plus the total interest thereon, but the term of such bonds shall not extend beyond the period of such increased levy.

Insofar as they might concern the issuance of bonds as provided for in this section, the provisions of sections three and four, article one, chapter thirteen of this code shall not apply: Provided, That nothing herein contained shall conflict with the provisions of article ten, section eight of the constitution of West Virginia.

CHAPTER 175

(House Bill No. 35—By Mr. Speaker, Mr. Singleton, and Mr. Seibert)

[Passed February 8, 1963; in effect ninety days from passage. Approved by the Governor.]
nine hundred thirty-one, as amended, relating to procedures and requirements in special levy elections conducted by local levying bodies.

Be it enacted by the Legislature of West Virginia:

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

Article 8. Levies.

Section 17. Special Levy Elections; Notices; Election Officers; Conduct of Election; Supplies; Canvass of Returns; Form of Ballot.

The local levying body shall publish notice, calling the election, at least once each week for two successive weeks before the election in two newspapers of opposite politics and of general circulation in the territory in which the election is held. If there is only one newspaper published in the county, the publication shall be made therein. The local levying body shall also post printed copies of the order at each place of voting at least ten days before the election. All the provisions of the law concerning general elections shall apply so far as they are practicable, except as follows:

Where a special election is held, the local levying body, having due regard to the minimum expense involved, shall determine the number of election officials necessary to properly conduct said election, which number shall in no case be less than three commissioners and two clerks, and shall appoint the same and fix and pay their compensation, but otherwise the election officials shall be such as are appointed to serve with respect to the general election held at the same time. The local levying body, however, shall provide the election supplies necessary for such special election and shall canvass the returns thereof. A separate ballot shall be used at a levy election held in connection with any other election. The ballot shall be entitled: “Special election to authorize additional levies for the year(s) ....... and for the
29 purpose of ____________________ according to
30 the order of the ____________________ entered
31 on the __________ day of ____________________ .”
32 The additional levy shall be on class I property _______ cents; on class II property _______ cents; on class III
33 property (if any) _______ cents; on class IV property
34 (if any) _______ cents.

CHAPTER 176

(Com. Sub. for Senate Bill No. 171—Originating in the Senate
Committee on the Judiciary)

[Passed March 9, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article eight, chapter eleven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, and to further amend said article eight by adding thereto two new sections, design­
ated sections fourteen-b and twenty-six-a, relating to unlawful expenditures by local fiscal bodies; casual deficits;
the levying of a new or increased municipal tax, the effective date thereof, and the inclusion of such new or increased
tax in the levy estimate; and the revision of levy estimates.

Be it enacted by the Legislature of West Virginia:

That section twenty-six, article eight, chapter eleven of the
code of West Virginia, one thousand nine hundred thirty-one,
as amended, be amended and reenacted, and that said article
eight be further amended by adding thereto two new sections,
designated sections fourteen-b and twenty-six-a, all to read as
follows:

Article 8. Levies.

Section

14-b. Levy of additional tax.
26. Unlawful expenditures by local fiscal body.
26-a. Revision of levy estimate.

Section 14-b. Levy of Additional Tax.—The governing
body of any municipality may impose any tax not there-
tofore levied, or may increase any tax theretofore levied, and may make said tax or increase effective as of the date of the adoption of the ordinance imposing or increasing said tax, or as of any date thereafter specified in the ordinance regardless of whether or not said tax or the increase thereof is included within the levy estimate for the current or ensuing fiscal year, provided for in section fourteen of this article: Provided, That when said tax or increase is not included within such levy estimate, such tax or increase shall not be imposed until such levy estimate is revised in accordance with the provisions of section twenty-six-a hereof. If such tax or increase is continued in effect during subsequent fiscal years, it shall thereafter be included in the levy estimate.

Sec. 26. Unlawful Expenditures by Local Fiscal Body.—Except as provided in sections fourteen-b, twenty-five-a and twenty-six-a of this article, a local fiscal body shall not expend money or incur obligations:

(1) In an unauthorized manner;
(2) For an unauthorized purpose;
(3) In excess of the amount allocated to the fund in the levy order;
(4) In excess of the funds available for current expenses.

Notwithstanding the foregoing and any other provision of law to the contrary, a local fiscal body or its duly authorized officials shall not be penalized for a casual deficit which does not exceed its approved levy estimate by more than three per cent, provided such casual deficit be satisfied in the levy estimate for the succeeding fiscal year.

Sec. 26-a. Revision of Levy Estimate.—The tax commissioner shall, by uniform regulations, provide for the revision of the levy estimate of a county court or municipality to permit expenditures for purposes for which no appropriation or an insufficient appropriation was made in the annual levy estimate as approved by the tax commissioner. The revision shall be made only with the prior written approval of the tax commissioner.
AN ACT to amend and reenact section four, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exemptions from inheritance and transfer taxes.

Be it enacted by the Legislature of West Virginia:

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

Article 11. Inheritance and Transfer Taxes.

Section 4. Exemptions.

(a) All property transferred to the state or to any county, school district, or municipal corporation thereof, for public purposes, shall be exempt from taxation under this article.

(b) No transfer of one hundred dollars, or less, shall be taxable under this article. For this purpose, all transfers from a decedent to the same transferee shall be treated as a unit.

(c) In computing the tax upon property transferred to a widow, or a widower of a deceased person, an exemption of fifteen thousand dollars shall be allowed.

(d) In computing the tax upon property transferred to the father, mother, child or step-child of the decedent, there shall be allowed an exemption of five thousand dollars; from property transferred to a grandchild of the decedent there shall be allowed an exemption of two thousand five hundred dollars.

(e) There shall be exempt from taxation under this article, all property transferred to a person or corporation, foreign or domestic, in trust or for the use solely for educational, literary, scientific, religious or charitable purposes: Provided, however, That the property so trans-
 secular corporation, in trust or for the purposes herein men-
3 tioned, shall be exempt only so far as the laws of the
4 state where such person or foreign corporation is domi-
5 ciled would exempt like property transferred from that
6 state to a person or corporation in this state in trust and
7 for similar purposes.
8
9 The provisions of this section as hereby amended shall
10 apply to all future devises, bequests and gifts for such
11 purposes, and shall be retroactive in applying to all past
12 devises, bequests and gifts for such purposes, where the
13 final payment of transfer or inheritance taxes has not
14 been made to the state of West Virginia.
15
16 Chapter 178
17 (Senate Bill No. 313—By Mr. McCourt)
18
19 AN ACT to amend and reenact section twenty-one, article
20 eleven, chapter eleven of the code of West Virginia, one
21 thousand nine hundred thirty-one, as amended, relating to
22 appeals from assessments of inheritance and transfer taxes.
23
24 Be it enacted by the Legislature of West Virginia:
25
26 That section twenty-one, article eleven, chapter eleven of
27 the code of West Virginia, one thousand nine hundred thirty-
28 one, as amended, be amended and reenacted to read as follows:
29
30 Article 11. Inheritance and Transfer Taxes.
31
32 Section 21. Appeals from Assessment.—Within sixty
33 days after the tax commissioner shall have forwarded
34 a certificate of the amount of tax assessed upon the trans-
35 fer of any property, any person interested in such transfer,
36 or in such property, may apply to the circuit court of any
37 county, in which such property or the greater part thereof
38 may be, for an appeal from the assessment so made. Un-
less such appeal is taken within the time period herein provided, the tax commissioner’s assessment shall be final and not subject to judicial review. Such application shall be by petition in writing, stating the names and addresses of all persons interested, showing the grounds upon which the appellant claims to be aggrieved, and an appeal shall be allowed thereon forthwith; and, until the same shall have been heard and decided, proceedings for the collection of such taxes may be stayed by order of such court for good cause shown, and upon such conditions as it may direct. Such appeal shall be heard and decided as soon as may be. Before any such hearing reasonable notice thereof shall be given to all other persons interested, and to the tax commissioner and prosecuting attorney, who, with the said commissioner, shall defend the interest of the state. Upon such hearing the court shall consider all certificates relating to such taxes, and all other pertinent evidence, that may be offered by either party. If it be of the opinion that the assessment appealed from was correct, it shall affirm the same; if it be of the opinion that the transfer was not subject to any such taxes, it shall set aside such assessment and enter an order exonerating the property from taxes. If it be of the opinion that the transfer was subject to such taxation, but that the amount of taxes assessed was erroneous, it shall correct the assessment thereof by increasing or decreasing the amount thereof, as it may think just, and shall enter judgment accordingly. A copy of the judgment upon any such appeal shall be certified in duplicate, and forwarded and recorded as is herein provided with respect to the certificate of the tax commissioner.

CHAPTER 179

(Senate Bill No. 244—By Mr. McCourt)

[Passed March 2, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to repeal section three, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, and to enact in lieu thereof a new section, designated section three, relating to coin-operated service, merchandise, amusement devices and vending machines.

Be it enacted by the Legislature of West Virginia:

That section three, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and a new section, designated section three, be enacted in lieu thereof to read as follows:

**Article 12. License Taxes.**

**Section**

3. Installing, maintaining or operating coin-operated merchandise, service and amusement devices, and vending machines.

**Section 3. Installing, Maintaining or Operating Coin-Operated Merchandise, Service and Amusement Devices, and Vending Machines.**—Persons installing, maintaining or operating coin-operated service, merchandise and amusement devices or vending machines will be hereinafter referred to as vending machine operators.

The liability for the license to operate any type of coin-operated service, merchandise, amusement devices or vending machines shall be upon the owner of the machine. The ownership shall be established by either a bill of sale, paid invoice or a conditional sales contract which has been recorded in the applicable county clerk’s office. The leasing of such a machine shall not be considered as a transfer of ownership of the machine and where a lessor-lessee relationship exists, the lessor shall be liable for the applicable license and fees.

The annual license fee to keep or maintain a coin-operated baggage or parcel checking machine or device which is used for the storage of baggage or parcels of any character, shall be fifty cents for each section of any such device which is operated on the coin-in-the-slot principle; the annual license fee to keep or maintain any coin-operated toilet locker or device shall be fifty cents for every such locker or device.

The annual license fee to keep or maintain any coin-operated penny machine or device, which is not a gam-
bling device under any law of this state, shall be based upon the total number of machines maintained in this state by each operator with the tax to be assessed on a graduated scale according to such number of the machines so maintained.

The license fee for machines operated by pennies will be as follows: (1) For one machine, or more, but not exceeding four machines, two dollars per machine; (2) for five machines, or more, but not exceeding fifty machines, twenty-five dollars per operator; (3) for fifty-one machines, or more, but not exceeding one hundred fifty machines, seventy-five dollars per operator; (4) one hundred fifty-one machines, or more, but not exceeding three hundred machines, two hundred dollars per operator; (5) for machines in excess of three hundred, six hundred dollars per operator.

The annual license fee to keep or maintain any vending device operated by other than pennies, which is not a gambling device under any law of this state, shall be based upon the total number of machines maintained in this state by each operator with the tax to be assessed on a graduated scale according to such number of the machines so maintained.

The license fees for machines operated by other than pennies will be as follows: (1) For one machine, or more, but not exceeding nine machines, five dollars and fifty cents per machine; (2) for ten machines, or more, but not exceeding forty-nine machines, one hundred seventy-five dollars per operator; (3) for fifty machines, or more, but not exceeding one hundred machines, four hundred fifty dollars per operator; (4) for one hundred one machines, or more, but not exceeding two hundred machines, eight hundred dollars per operator; (5) for two hundred one machines, or more, but not exceeding three hundred machines, one thousand two hundred dollars per operator; (6) for three hundred one machines, or more, but not exceeding four hundred fifty machines, one thousand five hundred dollars per operator; (7) for in excess of four hundred fifty machines, one thousand eight hundred dollars per operator. Where an operator is operating both
penny and other than penny machines, he shall secure
licenses for both types of machines in the appropriate
brackets.

The term “machine” when used in this section shall not
be deemed to mean or include any pay telephone or postage stamp vending machine operated on the coin-in-the-slot principle.

Application for the license required herein shall contain
the number of machines that are to be kept or maintained
on location by the licensee within this state during the
ensuing license year. Each vending machine operator shall
make application to the tax commissioner on forms pro-
vided by him, and the applicant shall furnish such in-
formation as may be required by the tax commissioner
including the total number of vending machines on loca-
tion in this state and the applicant shall be subject to the
penalties of false swearing for any untrue statements con-
tained in his application.

The annual license fee as determined by the application
and the above-listed brackets, shall be paid prior to the
first day of July of each year: Provided, That each op-
erator will submit to the tax commissioner, not later than
the thirty-first day of May and not later than the thirtieth
day of November of each year, a certified statement as to
the total number of machines he has on location in this
state: Provided, however, That these semiannual re-
ports shall be used to determine the license fee due for
the immediate succeeding six-month period from the first
day of July through the thirty-first day of December or
from the first day of January through the thirtieth day
of June. In the event the certified statement should show
that the operator has increased the number of his ma-
chines on location to such an extent that he would then
be required to secure a license for the next higher bracket,
then the licensee shall remit the difference between the
two brackets; and likewise, if the certified statement
should show that the licensee has reduced the number of
machines on location to the extent that he would be li-
censed in the next lower bracket, then a refund for the
The difference between the two brackets would be issued to the licensee.

In addition to the semiannual certified statements from each operator, it is required that all manufacturers, jobbers, distributors or other sources of obtaining vending machines will be required to file monthly with the tax commissioner copies of all invoices or other evidence in writing, covering all shipments and deliveries of vending machines into this state and showing the name of consignee and his address, date, number of machines shipped and delivered to any operator in this state.

One license certificate shall be issued to each person keeping or maintaining such machines or devices as aforesaid, but the tax commissioner shall issue to any such licensee a decalcomania stamp for each such machine or device, which decalcomania stamp shall be securely attached to each such machine or device properly protected and plainly visible. Every such machine or device shall also bear so as to be plainly visible the name and address of the person keeping or maintaining such machine or device. Each license certificate when issued by the state tax commissioner shall be accompanied by a decalcomania as described above to the exact number the licensee has applied for and each licensee shall pay to the state tax commissioner in addition to his proper licensing fee the sum of five dollars which sum shall be his full payment for the decalcomania issued the licensee. These decalcomania shall be attached to each machine on location but may be transferable from machine to machine by the licensee. The state tax commissioner shall have clearly visible on each decalcomania the tax period for which said decalcomania are issued.

If any licensee shall need additional decalcomania during any one tax period he shall be issued such decalcomania by the state tax commissioner with no additional cost unless the number requested shall put such licensee in a new licensing class and then said licensee shall pay an additional five dollars for the additional decalcomania.

The proprietor or owner of the business conducted in
the place where any such machine is kept or maintained
is charged with the responsibility of satisfying himself
that such decalcomania stamp or other evidence of owner-
ship and license is so attached before permitting its in-
stallation in his place of business and in the event any
machine is found on location without such decalcomania
stamp then the machine will be considered to be un-
licensed and the tax commissioner, or his agents, may
take such machine or device into possession and deliver
the same to the sheriff of the county in which such ma-
chine or device is found, or the sheriff of such county on
his own initiative or upon order or direction of the tax
commissioner, or his agents, may take such machine or
device into possession, and in either event, said machine
or device shall be impounded until such license fee is paid;
in the event the license fee and penalties are not paid to
the sheriff within ten days after the date of such impound-
ing, then the sheriff shall sell such machine or device
in the manner provided by law for the sale of personal
property for taxes, within the time specified by the tax
commissioner which shall not be less than twenty days
nor more than sixty days from the date of the order or
direction of the tax commissioner; and from the proceeds
thereof shall discharge and pay the license fee due on
such machine or device and his costs, including costs of
impounding, storage, penalties and other fees due the
state and the sheriff; and the balance, if any there be,
shall be forfeited to the state.

No license fee shall be required of businesses keeping
or maintaining such machines or devices owned by them
in their own licensed store: Provided, however, That
where the principal business is the operation of the ma-
achines or devices, then licenses shall be obtained on the
graduated scale as outlined above: And provided further,
That any person exempt from such license shall obtain
from the tax commissioner a license receipt, decalcomania
stamp, or other evidence of exemption, at a cost not to
exceed fifty cents each, showing that he is so exempt,
which shall be effective for the period as provided for
annual licenses in this article; but to obtain such license
receipt or other evidence of exemption, he shall make an
affidavit and produce such other evidence as to the fact
entitling him to such exemption as the tax commissioner,
in his discretion, may require, which shall be on a form
to be prescribed by the tax commissioner.

Every person subject to the provisions of this section
shall make such reports and keep such records as may be
required by the rules and regulations of the commissioner
and shall permit him to inspect such records and the
stocks and supplies on hand at any time. Every such
person shall be required to make his records available for
inspection by the tax commissioner or his authorized
representative.

The commissioner is hereby authorized to make and
promulgate such reasonable rules and regulations as may
be necessary to administer the provisions of this section
and to insure the collection of the tax imposed hereby.

CHAPTER 180
(House Bill No. 411—By Mr. Brotherton)

[Passed March 8, 1963; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to repeal section eighty-a, article twelve, chapter
eleven of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the annual
license fee to be paid by domestic and foreign insurance
corporations and other organizations licensed by the in-
surance commissioner.

Be it enacted by the Legislature of West Virginia:

Article 12. License Taxes.
Section 1. Additional license fee on insurance corporations; repeal of statute.

Section 1. Additional License Fee on Insurance Cor-
porations; Repeal of Statute.—Section eighty-a, article
twelve, chapter eleven of the code of West Virginia, one
thousand nine hundred thirty-one, as enacted by chap-
AN ACT to amend and reenact sections eight-d and ten, article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the privilege tax on certain carrier corporations, the right of appeal from an assessment of such tax, an appeal bond, a certificate of the tax commissioner in lieu of such appeal bond, the procedure on appeal, the lien of such tax, the priority of such lien, a penalty for delinquency and a waiver of any penalty in whole or in part.

Be it enacted by the Legislature of West Virginia:

That sections eight-d and ten, article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**Article 12-a. Privilege Tax on Certain Carrier Corporations.**

**Section**

**8-d. Appeal.**

- **10. Lien of tax; penalty.**

**Section 8-d. Appeal.**—An appeal may be taken by the taxpayer to the circuit court of the county in which the activity taxed was engaged, or in which the taxpayer resides, or in the circuit court of Kanawha county, within thirty days after he shall have received notice from the tax commissioner of his determination as provided in section eight-c.
The appeal shall be taken by written notice to the tax commissioner and served as an original notice. When said notice is so served it shall, with the return thereon, be filed in the office of the clerk of the circuit court and docked as other cases with the taxpayer as plaintiff and the tax commissioner as defendant. Before the appeal is heard, the plaintiff shall file with such clerk a bond for the use of the defendant, with sureties approved by said clerk, the penalty of the bond to be not less than the total amount of the tax and penalties appealed from, and conditioned that the plaintiff shall perform the orders of the court; except that in lieu of said bond, the tax commissioner may upon a proper showing find and certify to said clerk that the properties of the plaintiff subject to the liens imposed by sections ten and ten-a of this article are adequate to secure the performance of the orders of the court.

The court shall hear the appeal and determine anew all questions submitted to it on appeal from the determination of the tax commissioner. In such appeal a certified copy of the tax commissioner’s assessment shall be admissible and shall constitute prima facie evidence of the tax due under the provisions of this article. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of said court with the tax commissioner who shall then correct the assessment in accordance with said decree. An appeal may be taken by the taxpayer or the tax commissioner to the supreme court of appeals of this state.

Sec. 10. Lien of Tax; Penalty.—The amount of the tax imposed by this article shall be a debt due the state. It shall be a personal obligation of the taxpayer and shall be a lien upon all property used in the business or occupation upon which such tax is imposed, and said lien shall have priority over all other liens and obligations except those due the United States. A penalty of one per cent per month shall be added to the amount of tax for each month of delinquency and shall be secured by said lien: Provided, That if such delinquency is due to reasonable cause the tax commissioner may waive or remit in whole or in part said penalties.
AN ACT to amend and reenact section eight, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the business and occupation tax, the right of appeal from an assessment of such tax, an appeal bond, a certificate of the tax commissioner in lieu of such appeal bond, and the procedure on appeal.

Be it enacted by the Legislature of West Virginia:

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


Section

8. Appeal.—An appeal may be taken by the taxpayer to the circuit court of the county in which the activity taxed was engaged, or in which the taxpayer resides, or in the circuit court of Kanawha county, within thirty days after he shall have received notice from the tax commissioner of his determination as provided in section seven-b.

The appeal shall be taken by written notice to the tax commissioner and served as an original notice. When said notice is so served it shall, with the return thereon, be filed in the office of the clerk of the circuit court and docketed as other cases with the taxpayer as plaintiff and the tax commissioner as defendant. Before the appeal is heard, the plaintiff shall file with such clerk a bond for the use of the defendant, with sureties approved by said clerk, the penalty of the bond to be not less than the total amount of the tax and penalties appealed from, and conditioned that the plaintiff shall perform the orders of the court;
except that in lieu of said bond, the tax commissioner may upon a proper showing find and certify to said clerk that the properties of the plaintiff subject to the liens imposed by sections twelve and fourteen of this article are adequate to secure the performance of the orders of the court.

The court shall hear the appeal and determine anew all questions submitted to it on appeal from the determination of the tax commissioner. In such appeal a certified copy of the tax commissioner's assessment shall be admissible and shall constitute prima facie evidence of the tax due under the provisions of this article. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of said court with the tax commissioner who shall then correct the assessment in accordance with said decree. An appeal may be taken by the taxpayer or the tax commissioner to the supreme court of appeals of this state.

**CHAPTER 183**

(House Bill No. 552—By Mr. Nuzum)

[Passed March 9, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the jurisdiction of justices of the peace for the trials of misdemeanors under the store license law.

Be it enacted by the Legislature of West Virginia:

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

**Article 13-a. Licenses for Operation, etc., of Stores.**

**Section 16. Penalty for violation of article; concurrent jurisdiction of justices of the peace.**

—Any person who
violates any of the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars and each and every day that such violation shall continue shall constitute a separate and distinct offense. Justices of the peace shall have concurrent jurisdiction with any other courts having jurisdiction for the trial of all misdemeanors arising under this section.

CHAPTER 184
(Senate Bill No. 243—By Mr. McCourt)

AN ACT to amend and reenact sections four and fourteen, article fourteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the motor carrier road tax.

Be it enacted by the Legislature of West Virginia:

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

Article 14-a. Motor Carrier Road Tax.

Section 4. Credit for payment of gasoline tax; refunds; hearing upon commissioner's refusal to make refund; appeals.

Section 4. Credit for Payment of Gasoline Tax; Refunds; Hearing upon Commissioner's Refusal to Make Refund; Appeals.—Every motor carrier subject to the tax herein imposed shall be entitled to a credit on such tax equivalent to the amount of tax per gallon of gasoline assessed by article fourteen of this chapter on all gasoline purchased by such carrier within this state for use in operations either within or without this state and upon which gasoline the tax imposed by the laws of this state
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10 has been paid: Provided, That such credit shall not be
11 allowed for any gasoline taxes for which any person, firm
12 or corporation has applied, or received, a refund of gaso-
13 line taxes under sections nineteen and twenty of article
14 fourteen of this chapter. Evidence of the payment of such
tax in such form as may be required by the commissioner
shall be furnished by each motor carrier claiming the
credit herein allowed. When the amount of the credit
herein provided exceeds the amount of the tax for which
the carrier is liable for the same quarter, such excess
shall, under regulations of the commissioner, be allowed
as a credit on the tax for which the carrier would be oth-
22 erwise liable for any of the four succeeding quarters. The
commissioner is, under regulations to be established by
him, hereby authorized to refund from the funds col-
25 lected under the provisions of this article and article four-
26 teen of this chapter the amount of the credit, if the motor
27 carrier by duly filed petition requests the commissioner
to do so and the commissioner is satisfied that said motor
carrier is entitled to said refund and that said motor car-
30 rier has not applied for a refund of the tax imposed by
article fourteen of this chapter: Provided, however, That
such refund shall not be made until after audit of the
applicant’s records by the commissioner or upon the post-
ing of a surety company bond by the applicant in an
amount fixed by the commissioner conditioned to pay all
road taxes due hereunder: Provided further, That said
36 credit or refund shall in no case be allowed to reduce the
amount of tax to be paid by a motor carrier below the
39 amount due as tax on gasoline used in this state as pro-
40 vided by article fourteen of this chapter. If the commis-
sioner shall refuse to allow a refund or credit in the
amount claimed by the applicant, the applicant may re-
43 quest a hearing on said application. Such hearing shall
be held within a reasonable time after such request is
made and after notice to the applicant of not less than ten
days.

47 The hearing shall be informal and may be conducted by
48 an examiner designated by the tax commissioner. At
49 such hearing evidence may be offered in support of the
50 claim of credit or refund or to prove that such claim is in-
correct. After such hearing the tax commissioner shall, within a reasonable time, give notice in writing of the decision. Unless an appeal is taken within thirty days from the service of this notice, the tax commissioner’s decision shall be final.

An appeal may be taken by the taxpayer to the circuit court of Kanawha county, within thirty days after he shall have received notice from the tax commissioner of his determination as provided in this section.

The court shall hear the appeal, and determine anew all questions submitted to it on appeal from the determination of the tax commissioner. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of said court with the tax commissioner who shall then correct his decision accordingly and allow the credit or refund as decreed by said court.

An appeal may be taken by the taxpayer or the tax commissioner to the supreme court of appeals of this state.

Sec. 14. Enforcement; Assistance of Department of Public Safety.—The tax commissioner, or any employee of the gasoline tax division so designated by him, shall have the same powers and authority to enforce the provisions of this article as are available to him for the enforcement of article fourteen of this chapter.

The state department of public safety is hereby authorized and may be requested to assist in the enforcement of the provisions of this article as directed by the tax commissioner.

CHAPTER 185

(Senate Bill No. 8—By Mr. McCourt)

[Passed February 12, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to additional consumers sales tax.
Be it enacted by the Legislature of West Virginia:

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

**Article 15. Consumers Sales Tax.**

**Section 3-a. Additional consumers sales tax.**

Section 3-a. Additional Consumers Sales Tax.—For the purpose of providing additional revenue for the state general revenue fund and for the privilege of selling tangible personal property and dispensing certain selected services defined in section eight of this article, the vendor, in addition to the tax imposed by section three of this article, shall collect from the purchaser the tax provided by this section, and shall pay the amount of such tax to the tax commissioner in accordance with the provisions of this article.

The amount of the tax shall be computed as follows:

On each sale, the additional sum of one cent ($.01) on each one dollar ($1.00) of monetary consideration, or fraction thereof, in excess of one dollar ($1.00).

Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition, payment, collection, remission and assessment of the consumers sales tax imposed by section three of said article shall be applicable to the levy, imposition, payment, collection, remission and assessment of such additional tax.

Notwithstanding the provisions of section thirty of this article, all moneys received by the tax commissioner from the additional tax imposed by this section shall be paid by him into the state fund, general revenue, to be expended in whatever manner provided by law.

It is the intent of the Legislature in imposing this additional tax to provide funds to the governor, the state road commissioner and the state department of natural resources for the emergency relief of unemployment throughout the state of West Virginia.

The provisions of this section shall expire June thirtieth, one thousand nine hundred sixty-four.
CHAPTER 186

(House Bill No. 327—By Mr. Ghiz)

(Passed March 4, 1963; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exemptions under the consumers sales tax.

Be it enacted by the Legislature of West Virginia:

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

Article 15. Consumers Sales Tax.

Section 9. Exemptions.—The following sales and services shall be exempt:

1. Sales of gasoline, taxable under article fourteen, chapter eleven of the code, one thousand nine hundred thirty-one;
2. Sales of gas, steam and water delivered to consumers through mains or pipes, and sales of electricity;
3. Sales of textbooks required to be used in any of the public schools of this state;
4. Sales of property or services to the state, its institutions or subdivisions, and to the United States, including agencies of federal, state or local governments for distribution in public welfare or relief work;
5. Sales of motor vehicles which are titled by the department of motor vehicles and which are subject to the tax imposed by section four, article three, chapter seventeen-a of the code;
6. Sales of property or services to churches and bona
fide charitable organizations who make no charge whatever for the services they render or to persons engaged in this state in the business of contracting, manufacturing, transportation, transmission, communication, or in the production of natural resources: Provided, however, That the exemption herein granted shall apply only to services, machinery, supplies and materials directly used or consumed in the businesses or organizations named above;

(7) An isolated transaction in which any tangible personal property is sold, transferred, offered for sale, or delivered by the owner thereof or by his representative for the owner's account, such sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by such owner or on his account by such representative;

(8) Sales of tangible personal property and services rendered for use or consumption in connection with the conduct of the business of selling tangible personal property to consumers or dispensing a service subject to tax under this article and sales of tangible personal property and services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which will be subject to the tax imposed by this article: Provided, however, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement of real property shall not be exempt;

(9) Sales of tangible personal property for the purpose of resale in the form of tangible personal property;

(10) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work;

(11) Sales and services, fire fighting, or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the state of West Virginia;

(12) Sales of newspapers when delivered to consumers by route carriers.
AN ACT to amend and reenact section two-a, article fifteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to an additional use tax.

Be it enacted by the Legislature of West Virginia:

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

Article 15-a. Use Tax.

Section 2-a. Additional use tax.

Section 2-a. Additional Use Tax.—For the purpose of providing additional revenue for the state fund, general revenue, there is hereby imposed, other than in this section two-a to the contrary, an additional excise (use) tax in the same form, manner and extent as in section two of this article provided; said additional excise (use) tax is imposed at the rate of one per cent of the purchase price of such property, with the first one dollar of such purchase price being exempt for the purpose of computing the additional excise tax imposed by this section two-a.

Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition, exemptions, payment, collection, remission and assessment of the excise tax imposed by section two of this article shall be applicable to the levy, imposition, exemptions, payment, collection, remission and assessment of such additional tax as imposed by this section two-a.

Notwithstanding the provisions of section twenty-six of this article, all moneys received from the additional
20 tax imposed by this section shall be paid into the state
21 fund, general revenue, to be expended in whatever man-
22 ner provided by law.
23 The provisions of this section shall expire June thirtieth,
24 one thousand nine hundred sixty-four.

CHAPTER 188

(House Bill No. 547—By Mr. Nuzum)

[Passed March 8, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to amend and reenact sections one, three, four, five,
six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen,
fifteen, sixteen, seventeen, eighteen, nineteen, twenty,
twenty-one and twenty-two, article seventeen, chapter
eleven of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to repeal section
four-a of said article seventeen; and to further amend said
article seventeen by adding thereto five new sections,
designated sections twenty-three, twenty-four, twenty-five,
twenty-six and twenty-seven, all relating to an excise tax
on the sale of cigarettes.

Be it enacted by the Legislature of West Virginia:

That sections one, three, four, five, six, seven, eight, nine, ten,
eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen,
eighteen, nineteen, twenty, twenty-one and twenty-two, article
seventeen, chapter eleven of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, be amended
and reenacted; and that section four-a of said article seventeen
be repealed; and that said article seventeen be further
amended by adding thereto five new sections, designated sec-
tions twenty-three, twenty-four, twenty-five, twenty-six and
twenty-seven, all to read as follows:

Article 17. Excise Tax on Sale of Cigarettes.

Section
1. Definitions.
3. Money received paid into general revenue fund.
4. How tax paid; stamps; how affixed and cancelled; violations.
5. Ultimate liability for tax.
6. Dealer's records.
7. Tobacco license required; suspension or revocation; common carriers to comply.
8. Cigarette vending machine operators.
10. Power of tax commissioner; rules and regulations; records by wholesalers and retailers; metering in lieu of stamping; agents for metering; levy to collect tax.
11. Form of stamps; custody; discounts; security for payments.
12. Sales by deputies; fees; reports of deputies.
13. Possession of unstamped cigarettes; failure to produce invoices; penalty.
14. False records; penalties.
15. Preventing inspections; penalties.
16. Sales or possession without affixing stamps; penalties.
17. Altering or counterfeiting stamps; penalties.
18. Penalties.
19. Jurisdiction of the justices of the peace.
20. Seizure and sale of cigarettes by commissioner; forfeiture; collection of tax.
21. Issuance of warrant to sheriff by commissioner; priority of tax.
22. Revocation or suspension of license; power of commissioner.
23. Same; notice and hearing; subpoena of witnesses; appeals.
25. No cigarette tax by municipalities or other governmental subdivisions.
26. Expiration and renewal of license.
27. Transportation of unstamped cigarettes; unstamped cigarettes in vending machine; forfeitures and sales of cigarettes and equipment.

Section 1. Definitions.—As used in this article:

(a) "Person" shall mean and include any individual, firm, association, company, partnership, corporation, joint stock company, club, agency, syndicate, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary or conservator.

(b) "Wholesaler" shall include any person who: (1) purchases cigarettes directly from the manufacturer; or (2) purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers or to other persons for the purposes of resale only; or (3) services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes. Nothing contained herein shall prevent a person from qualifying in different capacities as both a "wholesaler" and "retailer" under the applicable provisions of this article.
21 (c) "Retail dealer" includes every person in this state, other than a wholesale dealer, engaged in the business of selling cigarettes irrespective of quantity or amount or number of sales thereof.

25 (d) "Vending machine operator" is any person operating one or more cigarette vending machines.

27 (e) "Sale" includes exchange, barter, gift, offer for sale or distribution.

29 (f) "Cigarette" includes any roll for smoking made wholly or in any part of tobacco irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other material excepting tobacco.

35 (g) "Package" means the individual package, box or other container in or from which retail sales of cigarettes are normally made or intended to be made.

38 (h) "Stamp" shall mean any cigarette stamps required under this article, or any meter or ink impression authorized by the tax commissioner to serve as such stamp.

39 (i) "Commissioner" means the state tax commissioner and where the meaning of the context requires, all deputies, and employees duly authorized by him.

Sec. 3. Money Received Paid into General Revenue Fund.—All moneys received by the state tax commissioner from the excise tax on sales of cigarettes under this article, less deductions therefrom allowed for the cost of administration and operation, and refunds provided in section eleven hereunder, shall be paid into the general revenue fund of the state and expended therefrom in satisfaction of appropriations.

Sec. 4. How Tax Paid; Stamps; How Affixed and Cancelled; Violations.—The tax hereby imposed shall be paid by the purchase of stamps as provided in this article. A stamp or stamps shall be affixed to or printed on each package of an aggregate denomination of not less than the amount of the tax upon the contents thereof. The stamp or stamps, so affixed, shall be prima facie evidence of payment of the tax imposed by this article. Except as
may be otherwise provided in the rules and regulations prescribed by the commissioner under authority of this article, and unless such stamps have been previously affixed, they shall be so affixed by each wholesale dealer in this state, and cancelled, by writing across the face thereof the name of such wholesale dealer and the date of cancellation, or cancelled by methods prescribed by the tax commissioner, prior to the delivery of any cigarettes to any retail dealer in this state.

Each retail dealer, authorized to deal in unstamped cigarettes, who receives, brings or causes to be brought into this state unstamped cigarettes, shall immediately upon receipt of such unstamped cigarettes at his place of business, so affix such stamp to each package and shall cancel the same by writing or stamping his name and the date of cancellation across the face thereof, or as otherwise directed by regulation of the commissioner, or shall immediately mark in ink on each unopened box, carton or other container of such cigarettes the word "Received" and the month, day and hour of such receipt and shall affix his signature thereto or as otherwise directed by regulation of the commissioner. He shall in any event open such box, carton or other container and so affix such stamps to each package therein, and cancel the same in the manner herein designated, within twenty-four hours after such receipt and prior to the sale of such cigarettes to any other person.

Whenever any cigarettes are found in the place of business of such retail dealer without the stamps so affixed and cancelled or not so marked as having been received within the preceding twenty-four hours, the prima facie presumption shall arise that such cigarettes are kept therein in violation of the provisions of this article.

Sec. 5. Ultimate Liability for Tax.—Any person who advances or pays the tax imposed by this article through the purchase of such stamps shall add the amount of the tax so advanced or paid to the price of the cigarettes when sold by such person, it being intended that the ultimate incidence of and the liability for the tax shall be upon the ultimate consumer or user.
Sec. 6. Dealer's Records.—From and after the effective date hereof and at the time of delivering cigarettes to any person, each wholesale dealer in this state shall make a true duplicate invoice showing the date of delivery, the amount and value of each shipment of cigarettes delivered and the name of purchaser to whom delivery is made, and retain the same for a period of two years from the date of such delivery, subject to the use and inspection of the tax commissioner.

Each wholesale and retail dealer in this state shall procure and retain as a part of his records, invoices showing the amount and value of each shipment of cigarettes received by him, the date thereof and the name of the shipper and shall retain the same for a period of two years subject to the use and inspection of the commissioner.

The commissioner, in his discretion, may require reports from all dealers pertaining to the sale of cigarettes.

In each case in which cigarettes are shipped into the state of West Virginia by common carrier, such common carrier transporting any shipment thereof shall file with the commissioner a copy of the freight bill within ten days after delivery in this state of each shipment when requested so to do by the tax commissioner.

Sec. 7. Tobacco License Required; Suspension or Revocation; Common Carriers to Comply.—No person shall engage in the business of selling cigarettes at retail within this state without having first secured an annual cigarette retail dealer's license, which shall be issued by the state tax commissioner without charge. Cigarette retail dealer's license will be subject to suspension or revocation for violation of any laws or rules and regulations pertaining to the sale, possession, use or storage of cigarettes. Common carriers maintaining or operating equipment or facilities upon which cigarettes are sold shall comply with the requirements of this article with respect to the imposition of cigarette tax and affixing stamps to packages in which the same are sold in the state of West Virginia.

Sec. 8. Cigarette Vending Machine Operators.—A cigarette vending machine operator is any person operating one or more cigarette vending machines. For the purposes of this article, a vending machine operator will be
considered as a retail dealer. Cigarette vending machines are licensed under the general license law.

Sec. 9. Wholesale Dealers.—No wholesale dealer shall sell cigarettes to any person in this state other than to a licensed wholesaler or retail dealer, and no person in this state other than a licensed wholesale dealer shall sell cigarettes to a licensed retail dealer.

Sec. 10. Power of Tax Commissioner; Rules and Regulations; Records by Wholesalers and Retailers; Metering in Lieu of Stamping; Agents for Metering; Levy to Collect Tax.—The tax commissioner shall have power and authority to enforce and administer the provisions of this article. The tax commissioner shall have authority to promulgate in accordance with the provisions of this article such rules and regulations as he may deem necessary to carry out its provisions, and may adopt different detailed regulations applicable to diverse methods and conditions of sale of cigarettes in this state, prescribing in each class of cases upon whom, as between the wholesale dealer and the retail dealer, the primary duty of affixing stamps shall rest and the manner in which the stamps are to be affixed. Each licensed dealer shall be furnished a copy of such regulations upon request. Any such rule or regulation so furnished, excusing a wholesale dealer from affixing stamps under the circumstances of the particular case, shall be a defense in the prosecution of such dealer for violation of section seventeen of this article.

All books, papers, invoices and records of any wholesale or retail dealer in this state, whether or not required under the provisions of this article to be kept by him, showing his sales, receipts and purchases of cigarettes, shall at all times, during the usual business hours of the day, be open for the inspection of the tax commissioner, or his authorized agent, for such purposes; and the tax commissioner or a deputy shall have power to investigate and examine the stock of cigarettes in and upon the premises where the same are placed, stored, or sold, for the purpose of determining whether or not the provisions of this article are being obeyed.

The tax commissioner, if he shall determine that it is
practicable to stamp packages of cigarettes by impression
by means of a metering device, shall provide that such
metering device and its impression may be used in lieu of
the stamps otherwise required by law. The tax commis-
sioner may authorize any wholesale or retail dealer pur-
chasng unstamped cigarettes and holding the licenses
herein required, to use any metering device approved by
the commissioner, such device to be sealed by the com-
missioner or a deputy, or agent, authorized by the com-
missioner, before being used, and which device shall be
used only in accordance with the regulations prescribed
by the commissioner.

Any wholesale or retail dealer authorized by the tax
commissioner to affix stamps to packages of cigarettes by
means of a metering device shall file with the tax com-
missioner a bond in such amount as the tax commissioner
may designate, conditioned upon the payment of the tax
upon the cigarettes so stamped.

Wholesale and retail dealers licensed to use said device
shall make a monthly return to the commissioner and re-
mit monthly the amounts of tax due the state: Provided,
however, That a wholesale or retail dealer may elect to
pay the tax in advance where a metering device is used,
in which event such dealer shall deliver the metering de-
vice to the commissioner, or his agent authorized for the
purpose, who shall seal the meter in accordance with the
prepayment so made. The commissioner may designate
and authorize any bank or trust company with banking
offices in any county of this state, to act as his deputy or
agent for the purpose of performing his duties with re-
spect to sealing of metering devices or the selling of
stamps in such county, and may require bond, and the
action of any such deputy by its duly authorized officer
or employees shall be as valid as though performed by
the commissioner.

The commissioner shall have power to make an assess-
ment, against any retail or wholesale dealer who fails to
return or makes a false or erroneous return. The commis-
sioner may collect such assessment by levy, action at law,
distraint or any other method of enforcing taxes which
may be provided by law and shall have the right to file liens therefor in any county.

Sec. 11. Form of Stamps; Custody; Discounts; Security for Payments.—The commissioner shall design and procure stamps to be used as herein provided for, affixed and attached to containers, packages or receptacle of whatever kind that may be used for containing cigarettes. In the preparing of said stamp or stamps the same shall have printed or impressed thereon the words “State of West Virginia—Cigarette Tax Stamp” and such other words and figures as he may deem proper to show the value and denomination of the stamp or stamps. He shall also prescribe the form of impression to be placed upon any package or container of cigarettes by any metering device. The state tax commissioner shall collect the taxes provided for by this article.

Such stamps shall be kept in the custody of the state tax commissioner or such deputies as he may designate to sell the same. Such stamps shall be sold and accounted for at the face value thereof except that the tax commissioner may authorize sale thereof, or sell to wholesale or retail dealers in this state, or to wholesalers outside of this state such stamps at a discount of four per cent of the face value of such stamps, the same to be allowed as a commission for affixing and cancelling such stamps; and excepting further that the tax commissioner may, by like regulation so certified, authorize the delivery of stamps to wholesale or retail dealers in this state, or to wholesale dealers outside of this state on credit, allowing the same discount as when sold for cash, if when the purchaser shall file with the tax commissioner a bond made payable to the state of West Virginia, in such form and amount as the commissioner shall prescribe, and with surety or sureties to the satisfaction of the commissioner, conditioned as he may require, to guarantee payment within thirty days for stamps so delivered within such period of time and by making of such reports and settlement as the commissioner may require. The commissioner may, by further regulations, provide for cancelling, renewing or increasing such bond
or for the substitution of the surety thereon. The commis-
mioner shall redeem any unused or mutilated, but
identifiable stamps, that any licensed wholesale dealer
or retail dealer may present for redemption, on written
verified requests made by the purchaser, his administra-
tors, executors, successors, or assigns, and refund there-
for, ninety-five per cent of the face value of said stamps,
less any discounts allowed on the purchase of said stamps.
The commissioner shall pay on a like basis for stamps
destroyed by fire or flood upon presentation of proof of
such loss satisfactory to him. Such payments shall for
the purposes hereof be deemed to be refunds of taxes
improperly collected and shall be allowed and paid as
part of the cost of administration of this article as in
this article provided.

Sec. 12. Sales by Deputies; Fees; Reports of Deputies.
—The tax commissioner may appoint, subject to such
conditions as he shall deem to the best interests of the
state, any bank or trust company authorized to do busi-
ness in, and doing business in this state, as his deputy
for the purpose of selling such stamps, excepting that no
such deputy shall be thereby authorized to sell the same
at a discount or on credit, without prior written author-
ity by the tax commissioner and excepting, further, that
provisions hereof relating to sale of stamps shall not
prevent any bank or trust company from acting as the
commissioner's deputy for purposes of checking and seal-
ing meters under other provisions of this article. The
tax commissioner is hereby authorized to allow such
deputy, authorized to sell stamps hereunder, a fee of
one eighth of one per cent of the face value of all stamps
sold by such deputy and charge the same as a part of
the costs of administration of this article. The state tax
commissioner shall be responsible for the delivery of
stamps to any deputy so appointed, and may prescribe
such regulations and forms of receipts and reports as he
may deem necessary and advisable for the transaction of
the business of selling such stamps. Each such deputy
shall remit monthly, or oftener as requested, to the tax
commissioner all moneys arising from the sale of such
stamps by him, together with a report showing the names
of the purchasers and the number of each denomination
and the aggregate face value sold by each such deputy.
The tax commissioner may sell stamps at his office.

Sec. 13. Possession of Unstamped Cigarettes; Failure to
Produce Invoices; Penalty.—Whoever, being a retail
dealer in this state, has in his possession packages of
cigarettes not bearing the stamps herein required to be
affixed thereto, unless such packages shall be in un-
broken containers marked, pursuant to section four of
this article, as received within the preceding twenty-four
hours, or, whoever fails to produce on demand by the
commissioner invoices of all cigarettes purchased or re-
ceived by him within two years prior to such demand,
unless upon satisfactory proof it is shown that such
nonproduction is due to providential or other causes be-
yond his control, shall be guilty of a misdemeanor, and,
upon conviction thereof, shall be fined not less than
twenty-five dollars nor more than five hundred dollars,
or imprisoned in the county jail not more than ninety
days, or both, in the discretion of the court.

Sec. 14. False Records; Penalties.—Whoever makes any
false entry upon an invoice, package or container of
cigarettes required to be made under the provisions of
this article, or with intent to evade the tax imposed by
this article, presents any such false entry for the in-
spection of the commissioner, shall be guilty of a mis-
demeanor, and, upon conviction thereof, shall be fined not
less than twenty-five dollars nor more than five hundred
dollars, or imprisoned in the county jail not more than
ninety days, or both, in the discretion of the court.

Sec. 15. Preventing Inspections; Penalties.—Whoever
prevents or hinders the commissioner or his deputy from
making a full inspection of any place where cigarettes
subject to the tax imposed by this state are sold or
stored, or prevents or hinders the full inspection of in-
voices, books, records, or papers required to be kept
under the provisions of this article, shall be guilty of a
misdemeanor, and, upon conviction thereof, shall be fined
not less than twenty-five dollars nor more than five
Sec. 16. Sales or Possession without Affixing Stamps; Penalties.—Whoever sells cigarettes in this state without there having been first affixed to each individual package thereof the stamp or stamps required to be affixed thereto by this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than five hundred dollars, or imprisoned in the county jail not more than ninety days, or both, in the discretion of the court.

If a person, firm or corporation, who is not a regularly licensed dealer in tobacco products, as provided by this article, shall have in his possession within the state more than ten packages of cigarettes not bearing cigarette tax paid indicia of this state, such possession shall be presumed to be for the purpose of evading the payment of the taxes due thereon and shall be subject to the penalties as outlined in this section.

Sec. 17. Altering or Counterfeiting Stamps; Penalties. —Whoever falsely or fraudulently makes, forges, alters, or counterfeits any stamp prescribed by the commissioner under the provisions of this article, or causes or procures to be falsely or fraudulently made, forged, altered or counterfeited any such stamps or knowingly or wilfully utters, publishes, passes or tenders as true, any such false, altered, forged or counterfeited stamps, or uses more than once any stamp provided for and required by this article for the purpose of evading the tax hereby imposed shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for a term of not less than one year nor more than five years.

Sec. 18. Penalties.—Whoever violates any of the provisions of this article or any lawful rule or regulation promulgated by the commissioner under authority of this article for the violation of which no penalty is provided by law, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five
dollars nor more than one hundred dollars, or imprisoned in the county jail not more than ninety days, or both, in the discretion of the court.

Sec. 19. Jurisdiction of the Justices of the Peace.—Justices of the peace shall have concurrent jurisdiction with any other courts having jurisdiction for the trial of all misdemeanors arising under this article.

Sec. 20. Seizure and Sale of Cigarettes by Commissioner; Forfeiture; Collection of Tax.—Whenever the commissioner or any of his deputies or employees authorized by him for the purpose shall discover any cigarettes, subject to tax as provided by this article and upon which the tax has not been paid as herein required, the commissioner, or such deputy or employee is hereby authorized and empowered forthwith to seize and take possession of such cigarettes, which shall thereupon be deemed to be forfeited to the state and the commissioner may within a reasonable time thereafter by a notice posted upon the premises where such seizure was made, or by publication in some newspaper having circulation in the county wherein such seizure is made, at least five days before the day of sale, sell such forfeited cigarettes, and from the proceeds of such sale shall collect the tax due thereon together with a penalty of fifty per centum thereof and all expenses and costs incurred in such proceedings, and deduct and pay any other sums due the tax commissioner by the person in possession of said forfeited cigarettes, and pay the balance, if any, to such possessor: Provided, however, That such seizure and sale shall not be deemed to relieve any person from fine or imprisonment provided herein for violation of any provision of this article. Such sale may be made in any county the tax commissioner deems most convenient and economical. All taxes and penalties collected under the provisions of this section shall be paid into the state treasury and treated as other taxes collected under this article.

Sec. 21. Issuance of Warrant to Sheriff by Commissioner; Priority of Tax.—In addition to all other remedies for the collection of any taxes or fees due under the provisions of law, the tax commissioner may issue a
warrant directed to the sheriff of any county of the state commanding said sheriff to levy upon and sell the goods and chattels of such dealer, without exemption, found within his jurisdiction, for the payment of the amount of such delinquency with the added penalties and interest and the cost of executing the warrant and to return such warrant to the tax commissioner and to pay him the money collected by virtue thereof within the time to be therein specified which shall not be less than twenty nor more than sixty days from the date of the warrant. The sheriff to whom any such warrant shall be directed shall proceed upon the same in all respects and with like effect and in the same manner as prescribed by law in respect to executions issued against goods and chattels upon judgments by a court of record, and shall be entitled to the same fees for his services in executing the warrant to be collected in the same manner.

The claim arising by reason of delinquent cigarette taxes shall be a preferred claim against all of the assets of the dealer, real and personal, with priority over all taxes except real property taxes and other recorded state tax claims docketed according to law.

Sec. 22. Revocation or Suspension of License; Power of Commissioners.—The commissioner shall have the right to revoke or suspend any license issued under the provisions of this article and any tobacco license issued under article twelve of this chapter for violation by the licensee of the provisions of this article, or of the provisions of article eighteen of this chapter, or of the provisions of any other statute regulating the business of a wholesale dealer in cigarettes or of a retail dealer in cigarettes.

Sec. 23. Same; Notice and Hearing; Subpoena of Witnesses; Appeals.—No such revocation or suspension shall be made by the commissioner unless and until a hearing shall have been held after ten days' notice to the licensee of the time and place of such hearing, which notice shall contain a statement or specification of the charges, grounds or reason for such proposed action, and which shall be served upon the licensee as other notices or by registered mail to the licensee at his last known address;
at the time and place designated in the notice the licensee shall have the right to appear and produce evidence in his behalf and to be represented by counsel. The commissioner shall have authority to subpoena witnesses, whose fees shall be the same as those in similar hearings in the courts and which shall be treated as part of the expenses of administration and enforcement.

The hearing shall be conducted by the commissioner or by an examiner designated by him, and shall be held in the commissioner's office or at such other place upon which the parties may agree. The commissioner's decision shall be rendered within thirty days after the hearing.

If at the request of the licensee, or on his motion, the hearing shall be continued and shall not take place on the day fixed by the commissioner, then such licensee's license shall be suspended until the decision of the commissioner.

In the event of revocation or suspension of such license, the licensee shall not be permitted to exercise such license pending an appeal as provided in this article.

The action of the commissioner in revoking or suspending a license shall be subject to review upon certiorari by the circuit court of Kanawha county or by the circuit court of the county in which the licensee resides, when such licensee shall be aggrieved by such revocation or suspension. Petition for review upon certiorari shall be filed with such court within thirty days from the date of revocation or suspension by the commissioner, and the granting of certiorari shall be within the sound discretion of the court. The licensee shall pay the costs and fees incident to transcribing, certifying and transmitting the records to the circuit court.

If aggrieved by the final order of the circuit court, either the commissioner or the licensee may file a petition in the supreme court of appeals of West Virginia for a writ of error, but such petition shall be filed within thirty days from the date of such final order of the circuit court.

Sec. 24. Amounts Allowed for Administration.—The state tax commissioner, in the administration and enforce-
ment of this article, shall be allowed to expend out of the
taxes collected thereunder, or proceeds of sales of stamps,
a sum of not to exceed one and one-half per centum of the
tax collected or stamps sold, and in addition to said one
and one-half per centum all refunds allowed by this
article and discounts allowed and commissions paid to
deputies for the sales of stamps shall be charged as a
part of the expense of administration. The tax com-
missoner is authorized to draw his warrants for any
costs of administration authorized by this article upon
the proper officer of the state in the manner provided by
law.

Sec. 25. No Cigarette Tax by Municipalities or Other
Governmental Subdivisions.—No municipality or govern-
mental subdivision shall levy any excise or other tax re-
quiring cigarettes to be stamped, or requiring licenses for
sale thereof other than licenses which may be imposed as
a result of licenses provided for in article twelve of this
chapter.

Sec. 26. Expiration and Renewal of License.—The li-
cense required to be issued pursuant to this article shall
expire on the thirtieth day of June of each year. On or
before the first day of July of each year, every person
having a license shall apply to the state tax commis-
sioner for a renewal for the year next ensuing, unless
such person has ceased to operate or does not propose to
continue operation during the year next ensuing, in
which event he shall notify the state tax commissioner
that he has ceased operation or that he proposes to cease
operation prior to the first day of July of the year next
ensuing. All applications for renewal shall be made on
the forms prescribed by the state tax commissioner.

Sec. 27. Transportation of Unstamped Cigarettes; Un-
stamped Cigarettes in Vending Machine; Forfeitures and
Sales of Cigarettes and Equipment.—Every person who
shall transport cigarettes not stamped as required by this
article upon the public highways, waterways, roads or
streets of this state shall have in his actual possession in-
voices or delivery tickets for such cigarettes which shall
show the true name and complete and exact address of the
9 consignor or seller, the true name and complete and exact
10 address of the consignee, or purchaser, the quantity and
11 brands of the cigarettes transported and the true name
12 and complete and exact address of the person who has or
13 shall assume payment of the West Virginia state tax, or
14 the tax, if any, of the state or foreign country at the point
15 of ultimate destination: Provided, That any common car-
16 rier which has issued a bill of lading for a shipment of
17 cigarettes and is without notice to itself or to any of its
18 agents or employees that said cigarettes are not stamped
19 as required by this article shall be deemed to have com-
20 plied with this article and the vehicle or vessel in which
21 said cigarettes are being transported shall not be subject
22 to confiscation hereunder. In the absence of such invoices,
23 delivery tickets or bills of lading, as the case may be, the
24 cigarettes so transported, the vehicle or vessel in which the
25 cigarettes are being transported and any paraphernalia or
26 devices used in connection with the unstamped cigarettes,
27 are declared to be contraband goods and may be seized by
28 the commissioner, his agents or employees or by any peace
29 officer of the state when directed by the commissioner,
30 his agents or employees so to do without a warrant.
31 The commissioner shall immediately thereafter insti-
32 tute a proceeding for the confiscation thereof in the
33 circuit court of the county in which the seizure is
34 made. The court may proceed in a summary man-
35 ner and may direct confiscation to the commissioner:
36 Provided, however, That anything to the contrary not-
37 withstanding that any person claiming to be the holder
38 of a mortgage, conditional sales contract or other security
39 interest in any vehicle or vessel, the disposition of which
40 is provided for above, may present his petition so alleging
41 and be heard, and in the event it appears to the court
42 that the property was unlawfully used by a person other
43 than such claimant, and if the said claimant acquired his
44 security interest in good faith and without knowledge
45 that the vehicle or vessel was going to be so used; the
46 court shall either waive forfeiture in favor of such
47 claimant and order the vehicle or vessel returned or de-
48 livered to such claimant or if it is found that the value
49 thereof exceeds the amount of the claim, the court shall
order payment of the amount of the claim out of the proceeds of the sale. If unstamped cigarettes be found in any vending machine, both the cigarettes and the vending machine shall be contraband goods and may be seized by the commissioner, his agents or employees or by any peace officer of the state at the direction of the commissioner, his agents or employees, without a warrant.

CHAPTER 189

(House Bill No. 37—By Mr. Speaker, Mr. Singleton)

[Passed January 31, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to amend and reenact section two-b, article seventeen, and section two, article eighteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the imposition, collection and disposition of an additional tax on the sale of cigarettes, and upon the use, consumption or storage of cigarettes in this state, and declaring the purpose thereof.

Be it enacted by the Legislature of West Virginia:

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

Article

17. Excise Tax on Sale of Cigarettes.
18. Excise Tax on Use, Consumption or Storage of Cigarettes.

Article 17. Excise Tax on Sale of Cigarettes.

Section

2-b. Additional cigarette tax for support of schools.

Section 2-b. Additional Cigarette Tax for Support of Schools.—For the purpose of providing additional revenue for the support of free schools, there is hereby levied and imposed, on and after midnight of the last day of June,
Article 18. Excise Tax on Use, Consumption or Storage of Cigarettes.

Section 2. Levy of Tax on Cigarettes.—For the purpose of providing revenue for the general fund of this state an excise tax is hereby levied, on and after midnight of the last day of June, one thousand nine hundred sixty-two, on the use, consumption or storage of cigarettes by consumers in this state at the rate of three cents on each ten cigarettes or fractional part thereof: Provided, however, That the tax shall not apply if the tax levied in article seventeen of this chapter has been paid.

CHAPTER 190
(Senate Bill No. 133—By Mr. McCourt)

[Passed February 25, 1963; in effect from passage. Approved by the Governor.]
add thereto two new sections, designated sections four-a and four-b; relating to a tax on personal income, the rate of such tax, the effect of rate changes, and the meaning of terms as used in said article and chapter.

Be it enacted by the Legislature of West Virginia:

That sections four and nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that two new sections, designated sections four-a and four-b, be added thereto, all to read as follows:


Section 4. Rate of Tax; Taxable Years Ending Prior to January 1, 1963.-(a) Rate of Tax on Individuals.—The tax imposed by section three of this article on the West Virginia taxable income of every individual (other than a head of a household to whom subsection (b) applies) and upon the West Virginia taxable income of every estate and trust shall be equal to six per centum of the federal income tax which would be imposed on an identical amount of federal taxable income under subsection (a) of section one of the United States Internal Revenue Code of 1954.

(b) Rate of Tax on Heads of Households.—The tax imposed by section three of this article on the West Virginia taxable income of every individual who is a head of a household in the determination of his federal income tax for the taxable year shall be equal to six per centum of the federal income tax which would be imposed upon an identical amount of federal taxable income under subsection (b) of section one of the United States Internal Revenue Code of 1954.

(c) Rates of Tax in Case of Joint Return or Return of Surviving Spouse.—In the case of a joint return of a husband and wife, the tax imposed by section three of this article on the West Virginia taxable income shall be equal to six per centum of twice the tax which would be im-
posed upon half the identical amount of federal taxable income under subsection (a) of section one of the United States Internal Revenue Code of 1954. For purposes of this subsection of this article and for the purposes of section five of this article, the return of an individual who is entitled to file his federal income tax return for the taxable year as a surviving spouse shall be treated as a joint return of a husband and wife.

(d) Effective Date.—The provisions of this section shall be given effect in determining the rate of tax imposed by this article for all taxable years or portions thereof ending prior to the first day of January, one thousand nine hundred sixty-three.

Sec. 4-a. Same; Taxable Years Beginning on or After January 1, 1963.—(a) Rate of Tax on Individuals and Heads of Households.—The tax imposed by section three of this article on the West Virginia taxable income of every individual, every individual who is a head of a household in the determination of his federal income tax for the taxable year, and every estate and trust shall be determined in accordance with the following table:
If the West Virginia taxable income is:

<table>
<thead>
<tr>
<th>Income Range</th>
<th>Tax Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $2,000</td>
<td>1.2% of the taxable income</td>
</tr>
<tr>
<td>Over $2,000 but not over $4,000</td>
<td>$24.00, plus 1.3% of excess over $2,000</td>
</tr>
<tr>
<td>Over $4,000 but not over $6,000</td>
<td>$50.00, plus 1.6% of excess over $4,000</td>
</tr>
<tr>
<td>Over $6,000 but not over $8,000</td>
<td>$82.00, plus 1.8% of excess over $6,000</td>
</tr>
<tr>
<td>Over $8,000 but not over $10,000</td>
<td>$118.00, plus 2.0% of excess over $8,000</td>
</tr>
<tr>
<td>Over $10,000 but not over $12,000</td>
<td>$158.00, plus 2.3% of excess over $10,000</td>
</tr>
<tr>
<td>Over $12,000 but not over $14,000</td>
<td>$204.00, plus 2.6% of excess over $12,000</td>
</tr>
<tr>
<td>Over $14,000 but not over $16,000</td>
<td>$256.00, plus 2.8% of excess over $14,000</td>
</tr>
<tr>
<td>Over $16,000 but not over $18,000</td>
<td>$312.00, plus 3.0% of excess over $16,000</td>
</tr>
<tr>
<td>Over $18,000 but not over $20,000</td>
<td>$372.00, plus 3.1% of excess over $18,000</td>
</tr>
<tr>
<td>Over $20,000 but not over $22,000</td>
<td>$434.00, plus 3.4% of excess over $20,000</td>
</tr>
<tr>
<td>Over $22,000 but not over $24,000</td>
<td>$502.00, plus 3.5% of excess over $22,000</td>
</tr>
<tr>
<td>Over $24,000 but not over $26,000</td>
<td>$572.00, plus 3.6% of excess over $24,000</td>
</tr>
<tr>
<td>Over $26,000 but not over $28,000</td>
<td>$642.00, plus 3.7% of excess over $26,000</td>
</tr>
<tr>
<td>Over $28,000 but not over $30,000</td>
<td>$714.00, plus 3.8% of excess over $28,000</td>
</tr>
<tr>
<td>Over $30,000 but not over $32,000</td>
<td>$786.00, plus 3.9% of excess over $30,000</td>
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<tr>
<td>Over $32,000 but not over $34,000</td>
<td>$864.00, plus 4.0% of excess over $32,000</td>
</tr>
<tr>
<td>Over $34,000 but not over $36,000</td>
<td>$942.00, plus 4.1% of excess over $34,000</td>
</tr>
<tr>
<td>Over $36,000 but not over $38,000</td>
<td>$1,020.00, plus 4.2% of excess over $36,000</td>
</tr>
<tr>
<td>Over $38,000 but not over $40,000</td>
<td>$1,100.00, plus 4.3% of excess over $38,000</td>
</tr>
<tr>
<td>Over $40,000 but not over $42,000</td>
<td>$1,180.00, plus 4.4% of excess over $40,000</td>
</tr>
<tr>
<td>Over $42,000 but not over $44,000</td>
<td>$1,260.00, plus 4.5% of excess over $42,000</td>
</tr>
<tr>
<td>Over $44,000 but not over $46,000</td>
<td>$1,340.00, plus 4.6% of excess over $44,000</td>
</tr>
<tr>
<td>Over $46,000 but not over $48,000</td>
<td>$1,420.00, plus 4.7% of excess over $46,000</td>
</tr>
<tr>
<td>Over $48,000 but not over $50,000</td>
<td>$1,500.00, plus 4.8% of excess over $48,000</td>
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<tr>
<td>Over $50,000 but not over $52,000</td>
<td>$1,580.00, plus 4.9% of excess over $50,000</td>
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<tr>
<td>Over $52,000 but not over $54,000</td>
<td>$1,660.00, plus 5.0% of excess over $52,000</td>
</tr>
<tr>
<td>Over $54,000 but not over $56,000</td>
<td>$1,740.00, plus 5.1% of excess over $54,000</td>
</tr>
<tr>
<td>Over $56,000 but not over $58,000</td>
<td>$1,820.00, plus 5.2% of excess over $56,000</td>
</tr>
<tr>
<td>Over $58,000 but not over $60,000</td>
<td>$1,900.00, plus 5.3% of excess over $58,000</td>
</tr>
<tr>
<td>Over $60,000 but not over $62,000</td>
<td>$1,980.00, plus 5.4% of excess over $60,000</td>
</tr>
<tr>
<td>Over $62,000 but not over $64,000</td>
<td>$2,060.00, plus 5.5% of excess over $62,000</td>
</tr>
<tr>
<td>Over $64,000 but not over $66,000</td>
<td>$2,140.00, plus 5.6% of excess over $64,000</td>
</tr>
<tr>
<td>Over $66,000 but not over $68,000</td>
<td>$2,220.00, plus 5.7% of excess over $66,000</td>
</tr>
<tr>
<td>Over $68,000 but not over $70,000</td>
<td>$2,300.00, plus 5.8% of excess over $68,000</td>
</tr>
<tr>
<td>Over $70,000 but not over $72,000</td>
<td>$2,380.00, plus 5.9% of excess over $70,000</td>
</tr>
<tr>
<td>Over $72,000 but not over $74,000</td>
<td>$2,460.00, plus 6.0% of excess over $72,000</td>
</tr>
<tr>
<td>Over $74,000 but not over $76,000</td>
<td>$2,540.00, plus 6.1% of excess over $74,000</td>
</tr>
<tr>
<td>Over $76,000 but not over $78,000</td>
<td>$2,620.00, plus 6.2% of excess over $76,000</td>
</tr>
<tr>
<td>Over $78,000 but not over $80,000</td>
<td>$2,700.00, plus 6.3% of excess over $78,000</td>
</tr>
<tr>
<td>Over $80,000 but not over $82,000</td>
<td>$2,780.00, plus 6.4% of excess over $80,000</td>
</tr>
</tbody>
</table>
(b) Rate of Tax in Case of Joint Return or Return of Surviving Spouse.—In the case of a joint return of a husband and wife and the return of an individual who is entitled to file his federal income tax return for the taxable year as a surviving spouse, the tax imposed by section three of this article on the West Virginia taxable income shall be determined in accordance with the following table:

If the West Virginia taxable income is: ........................................ The tax is:

- Not over $4,000 ........................................ 1.2% of the taxable income
- Over $4,000 but not over $8,000 ...................... $48.00, plus 1.3% of excess over $4,000
- Over $8,000 but not over $12,000 ................... $100.00, plus 1.6% of excess over $8,000
- Over $12,000 but not over $16,000 ................. $164.00, plus 1.8% of excess over $12,000
- Over $16,000 but not over $20,000 ................. $236.00, plus 2.0% of excess over $16,000
- Over $20,000 but not over $24,000 ................. $316.00, plus 2.3% of excess over $20,000
- Over $24,000 but not over $28,000 ................. $408.00, plus 2.6% of excess over $24,000
- Over $28,000 but not over $32,000 ................. $512.00, plus 2.8% of excess over $28,000
| Over $32,000 but not over $36,000 | $624.00, plus 3.0% of excess over $32,000 |
| Over $36,000 but not over $40,000 | $744.00, plus 3.1% of excess over $36,000 |
| Over $40,000 but not over $44,000 | $868.00, plus 3.4% of excess over $40,000 |
| Over $44,000 but not over $52,000 | $1,004.00, plus 3.5% of excess over $44,000 |
| Over $52,000 but not over $64,000 | $1,284.00, plus 3.7% of excess over $52,000 |
| Over $64,000 but not over $76,000 | $1,728.00, plus 3.9% of excess over $64,000 |
| Over $76,000 but not over $88,000 | $2,196.00, plus 4.1% of excess over $76,000 |
| Over $88,000 but not over $100,000 | $2,588.00, plus 4.3% of excess over $88,000 |
| Over $100,000 but not over $120,000 | $3,204.00, plus 4.5% of excess over $100,000 |
| Over $120,000 but not over $140,000 | $4,104.00, plus 4.7% of excess over $120,000 |
| Over $140,000 but not over $160,000 | $5,044.00, plus 4.9% of excess over $140,000 |
| Over $160,000 but not over $180,000 | $6,024.00, plus 5.0% of excess over $160,000 |
| Over $180,000 but not over $200,000 | $7,024.00, plus 5.2% of excess over $180,000 |
| Over $200,000 but not over $300,000 | $8,064.00, plus 5.3% of excess over $200,000 |
| Over $300,000 but not over $400,000 | $13,364.00, plus 5.4% of excess over $300,000 |
| Over $400,000 | $18,764.00, plus 5.5% of excess over $400,000 |

(c) Effective Date.—The provisions of this section shall be given effect in determining the rate of tax imposed by this article for all taxable years or portions thereof beginning on or after the first day of January, one thousand nine hundred sixty-three.
Sec. 4-b. Effect of Rate Changes during a Taxable Year.

—If any rate of tax imposed by this article changes to become effective after the thirty-first day of December, one thousand nine hundred sixty-two, and if the taxable year includes the effective date of the change (unless that date is the first day of the taxable year), then: (1) Tentative taxes shall be computed by applying the rate for the period before the effective date of the change, and the rate for the period on and after such date, to the taxable income for the entire taxable year; and (2) the tax for such taxable year shall be the sum of that proportion of each tentative tax which the number of days in each period bears to the number of days in the entire taxable year.

Sec. 9. Meaning of Terms.—Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1954, as amended, and such other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred sixty-three, shall be given effect in determining the taxes imposed by this article for the tax period beginning the first day of January, one thousand nine hundred sixty-two, and thereafter, but no amendment to laws of the United States made on or after the first day of January, one thousand nine hundred sixty-three, shall be given effect.

CHAPTER 191

(Senate Bill No. 163—By Mr. Moreland)

[Passed March 8, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seventeen, twenty, twenty-three, twenty-four, twenty-eight, thirty, thirty-
one, thirty-two, forty-three and forty-four, article three, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend article four of said chapter by adding thereto a new section, designated section nine-a, all relating to the sale of land for nonpayment of taxes thereon.

Be it enacted by the Legislature of West Virginia:

That sections seventeen, twenty, twenty-three, twenty-four, twenty-eight, thirty, thirty-one, thirty-two, forty-three and forty-four, article three, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that article four of said chapter be amended by adding thereto a new section, designated section nine-a, all to read as follows:

Article


Section
17. Redemption from purchase by individual; receipt; list of redemp­tions; lien.
20. What purchaser must do before he can secure deed.
23. Notice to redeem.
28. Title acquired by individual purchaser.
30. Right to set aside sale or deed when all taxes paid before sale.
31. Right to set aside deed improperly obtained.
32. Right to set aside deed when one entitled to notice not notified.
43. Certification by sheriff of delinquent taxes.
44. Exception.

Section 17. Redemption from Purchase by Individual; Receipt; List of Redemptions; Lien.—After the sale, the former owner of, or any other person who was entitled to pay the taxes on, any real estate purchased by an indi­vidual, may redeem at any time before April first of the second year following the sale. In order to redeem, he must pay to the purchaser, his heirs or assigns, the following amounts: (1) The amount of purchase money paid to the sheriff, with interest at the rate of twelve per cent per annum from the date of sale. (2) All other taxes thereon, which have since been paid by the purchaser, his heirs or assigns, with interest at the rate of twelve per cent per annum from the date of payment. (3) Such
TAXATION

14 additional expenses as may have been incurred in procur-
15 ing the survey or report provided for in sections twenty-
16 one and twenty-two of this article; and for the examina-
17 tion of the title in order to prepare the list of those to be
18 served with notice and giving the notice required by sec-
19 tions twenty-three and twenty-four of this article, but the
20 amount he shall be required to pay for the expenses in-
21 curred in preparing the list of those to be served with
22 notice to redeem, required by sections twenty-three and
23 twenty-four of this article, shall not exceed fifteen dollars.
24 The person redeeming shall be given duplicate receipts
25 for the payment. If the purchaser, his heirs or assigns,
26 shall refuse or fail to sign and give such receipts when
27 lawfully required to do so, he or they shall pay to the
28 person redeeming twice the amount of such payment,
29 which may be recovered by action on the case in any
30 court of competent jurisdiction. One of such receipts shall
31 be filed with the clerk of the county court on or before the
32 day on which the right to redeem expires. The clerk shall
33 endorse on both receipts the fact and time of such filing,
34 and shall note the fact of redemption on his record of de-
35 linquent lands. If the receipt is not filed on or before such
36 date, the redemption shall be void as to creditors and sub-
37 sequent bona fide purchasers from the purchaser, his heirs
38 or assigns. If, however, the receipt is filed after the date
39 required, it shall operate as notice from and after the date
40 of filing. In April of each year the clerk of the county
41 court shall prepare and certify to the auditor a list of
42 all redemptions from sales to individual purchasers, which
43 have not been included in any former list.
44 Any person who, by reason of the fact that no provision
45 is made for partial redemption of real estate purchased
46 by an individual, is compelled in order to protect himself
47 to redeem all of such real estate when it belongs in whole
48 or in part to some other person, shall have a lien on the
49 interest of such other person for the amount paid to re-
50 deem such interest. He shall lose his right to the lien,
51 however, unless within thirty days after payment he shall
52 file with the clerk of the county court his claim in writ-
53 ing against the owner of such interest, together with the
54 receipt provided for in this or the following section. The
Sec. 20. What Purchaser Must Do before He Can Secure Deed.—At any time after October thirty-first of the year following the sale, and on or before December thirty-first of the same year, the purchaser, his heirs or assigns, in order to secure a deed for the real estate purchased, must: (1) Secure and file with the clerk of the county court the survey or report provided for in sections twenty-one and twenty-two of this article; (2) examine the title in order to prepare a list of those to be served with notice to redeem and request the clerk to prepare and serve the notice as provided in sections twenty-three and twenty-four of this article; and (3) deposit, or offer to deposit, with the clerk a sum sufficient to cover the cost of preparing and serving the notice. For failure to meet these requirements, the purchaser shall lose all the benefits of his purchase.

If the person requesting preparation and service of the notice is an assignee of the purchaser, he shall, at the time of the request, file with the clerk a written assignment to him of the purchaser's rights, executed, acknowledged and certified in the manner required to make a valid deed.

Sec. 23. Notice to Redeem.—Whenever the provisions of section twenty of this article have been complied with, the clerk of the county court shall thereupon prepare a notice in form or effect as follows:

To ..............................................................

You will take notice that .............., the purchaser (or .............., the assignee, heir or devisee of .............., the purchaser) of the following real estate, ......................, (here describe the real estate sold) located in ......................, (here name the city, town or village in which the real estate is situated or, if not within a city, town or village, give the district and a general description) which was returned delinquent in the name of ......................, and was sold by the Sheriff of ...................... County at the sale for delinquent taxes made on the ...... day of ......, 19....., has requested
that you be notified that a deed for such real estate will be
made to him on or after the first day of April, 19__, as
provided by law, unless before that day you redeem such
real estate. The amount you will have to pay to redeem
on the last day, March thirty-first, will be as follows:

Amount paid sheriff at sale, with interest to March 31st
$_________

Amount of taxes paid on the property, since the sale,
with interest to March 31st $_________

Amount paid for survey and report $_________

Amount paid for preparation of list of those to be served,
and for preparation and service of the notice $_________

Total $_________

You may redeem at any time before March thirty-first
by paying the above total less any unearned interest.

Given under my hand this ______ day of _____________, 19______.

Clerk of the County Court of _____________ County,

State of West Virginia

The clerk for his service in preparing the notice shall
receive a fee of fifty cents for the original and twenty-
five cents for each copy required.

Sec. 24. Service of Notice.—As soon as the clerk has
prepared the notice provided for in the preceding section,
he shall cause it to be served upon the following persons:
(1) The person in whose name the real estate was re-
turned delinquent and sold, or, in case of his death, his
heir or devisee and his personal representative, if such
there be; (2) any grantee of such person, or his heir or
devicee and his personal representative, if such there be,
if a conveyance of such real estate is recorded or filed for
record in the office of the clerk; (3) any person having a
lien upon such real estate disclosed by any paper recorded
in the clerk's office; and (4) any other person having such
an interest in the property as would entitle him to redeem,
if the existence of such interest appears of record.

The notice shall be personally served upon all such per-
sons residing or found in the state in the manner provided
17 for serving process commencing a suit, on or before the
18 first day of February following the request for such notice.
19 If any person entitled to notice is a nonresident of the state
20 or if his residence is unknown to the clerk and cannot by
21 due diligence be discovered, the notice shall be served
22 by publication once a week for three successive weeks in
23 some newspaper published in the county in which such
24 real estate is located, or if no newspaper is published in
25 the county, then in some newspaper of general circulation
26 in the county. If service by publication is necessary, pub-
27 lication shall be commenced within two weeks after Feb-
28 ruary first, and a copy of the notice shall at the same time
29 be sent by registered mail, return receipt requested, to the
30 last known address of the person served. The return of
31 service of such notice and the affidavit of publication, if
32 any, shall be in the manner provided for process generally
33 and shall be filed and preserved by the clerk in his office,
34 together with any return receipts for notices sent by regis-
35 tered mail.

Sec. 28. Title Acquired by Individual Purchaser.—
2 Whenever the purchaser of any real estate sold at a tax
3 sale, his heirs or assigns, shall have obtained a deed for
4 such real estate from the clerk of the county court or from
5 a commissioner appointed to make the deed, he or they
6 shall thereby acquire all such right, title and interest, in
7 and to the real estate, as was, at the time of the execution
8 and delivery of the deed, vested in or held by any person
9 who was entitled to redeem, unless such person is one
10 who, being required by law to have his interest separately
11 assessed and taxed, has done so and has paid all the taxes
12 due thereon, or unless the rights of such person are ex-
13 pressly saved by the provisions of sections sixteen, thirty,
14 thirty-one, thirty-two or thirty-five of this article. The
15 tax deed shall be conclusive evidence of the acquisition
16 of such title. The title so acquired shall relate back to
17 July first of the year in which the taxes, for nonpayment
18 of which the real estate was sold, were assessed.

Sec. 30. Right to Set Aside Sale or Deed When All
2 Taxes Paid before Sale.—Any owner of real estate which
3 was sold for nonpayment of taxes, when all taxes thereon
had in fact been paid before the sale, his heirs and assigns, or the person who paid the taxes, may, on or before October thirty-first of the third year following the sale, whether the sale was to an individual or to the state, institute a civil action to set aside the sale and to enjoin the proper official from taking any further steps in the procedure provided in this and the following article, or, if a deed has been delivered to the purchaser, to set aside the deed. If such suit is instituted by or on behalf of the owner of an undivided interest which was included in a group assessment but which was separately redeemed as provided in section eighteen, article two of this chapter, the sale or the deed shall be set aside only insofar as it affects his interest.

Sec. 31. Right to Set Aside Deed Improperly Obtained. —Whenever the clerk of the county court has delivered a deed to the purchaser after the time specified in section twenty-five of this article, or, within that time, has delivered a deed to a purchaser who was not entitled thereto either because of his failure to meet the requirements of section twenty of this article or because the property conveyed had been redeemed, the owner of such property, his heirs and assigns, or the person who redeemed the property, may, on or before October thirty-first of the third year following the sale, institute a civil action to set aside the deed. No deed shall be set aside under the provisions of this section, except in the case of redemption, until payment has been made or tendered to the purchaser, or his heirs or assigns, of the amount which would have been required for redemption, together with any taxes which have been paid on the property since delivery of the deed, with interest at the rate of twelve per cent per annum.

Sec. 32. Right to Set Aside Deed When One Entitled to Notice Not Notified.—If any person entitled to be notified under the provisions of section twenty-four of this article is not served with the notice as therein required, and does not have actual knowledge that such notice has been given to others in time to protect his interests by redeeming the property, he, his heirs and assigns, may, on or before October thirty-first of the third year following the
sale, institute a civil action to set aside the deed. No
deed shall be set aside under the provisions of this section
until payment has been made or tendered to the pur-
chaser, or his heirs or assigns, of the amount which would
have been required for redemption, together with any
taxes which have been paid on the property since delivery
of the deed, with interest at the rate of twelve per cent
per annum.

Sec. 43. Certification by Sheriff of Delinquent Taxes.—
In the event any part of article three of this chapter be
declared to be unconstitutional so that it is impossible for
the sheriff to collect delinquent taxes upon any property,
which are in his hands for collection, or make sale thereof
pursuant to the provisions of this chapter, then and in
that event the sheriff shall prepare and certify to the
auditor, on or after the first day of October, and on or be­
fore the first day of November, of the year next following
the year for which such taxes may have been levied, a
list or lists of such taxes which are delinquent. The lien
of such taxes upon all such property shall remain in force
and in effect until enforced or the taxes paid. After certi­
fication to the auditor, the auditor shall have the right to
receive collection of any such taxes, and shall retain such
lists pending the further enactment by the Legislature of
West Virginia of statutes relating to the enforcement of
the lien for taxes and sale and disposition of any property
subject to such liens.

Sec. 44. Exception.—Notwithstanding the provisions of
sections two, four, five, fourteen, seventeen, twenty, twen­
ty-three, twenty-four, twenty-eight, thirty, thirty-one,
and forty-two of this article, the provisions of this article as of January first, one thousand nine hun­
dred sixty-one, shall govern the sale of land for taxes
levied upon assessed values as of January first, one thou­
sand nine hundred sixty-one, or prior years.


Section
9-a. Exception.

Section 9-a. Exception.—Notwithstanding the provi­sions of section nine of this article, the provisions of this
article as of January first, one thousand nine hundred sixty-one, shall govern the sale of land for taxes levied upon assessed values as of January first, one thousand nine hundred sixty-one, or prior years.

CHAPTER 192
(Senate Com. Sub. for Eng. Com. Sub. for House Bill No. 38—Originating in the Senate Committee on Finance)

(Passed March 9, 1963; in effect July 1, 1963. Approved by the Governor.)

AN ACT to amend and reenact sections two, seven, eight and nine, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to taxes to be paid by and the financial responsibility of licensees conducting horse racing within the state; awards to an owner of a horse when said owner is a bona fide resident of this state; and to the regulation and control of horse racing.

Be it enacted by the Legislature of West Virginia:

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

Article 23. Horse Racing.

Section 2. Qualifications and Compensation of Members, Secretary, Steward and Employees.—The compensation of the members of the commission shall not exceed the sum of forty dollars per day, and actual bona fide expenses, while actually engaged in the business of the
commission, and shall not exceed the sum of four thousand dollars per annum in the aggregate for compensation.

The commission shall, under the restrictions and within the qualifications hereinafter set forth, appoint a secretary and steward, to represent the commission, and such additional help as shall be reasonably necessary to administer the provisions of this article, and shall, within the limits prescribed by the Legislature, fix their compensation and actual expenses. The compensation and actual expenses of the members and employees of the commission shall be paid from the funds in the hands of the state treasurer collected from the license tax on pari-mutuel wagering and shall be itemized in the budget in the same manner as all other departments of the state government, but no such expenses shall be paid unless an itemized account thereof, under oath, be first filed with the state auditor.

(a) No person who directly or indirectly has an interest in any manner whatsoever, including an interest as owner, lessor, lessee, stockholder or employee, in any race track, where horse race meetings may be held, shall be eligible for appointment to the commission.

(b) No person while serving as a member of the Legislature, or as an elective officer of this state, shall be eligible for appointment to the commission.

(c) No person convicted of an offense, which, under the laws of this state or any other state or of the United States of America, constitutes a felony or a violation of chapter sixty-one, article four of this code, shall be eligible for appointment to the commission.

(d) No person shall knowingly be employed by the commission in any capacity whatsoever who shall:

1. Directly or indirectly, or in any capacity, own or have an interest in any race track where horse race meetings may be held, including an interest as owner, lessor, lessee, stockholder or employee.

2. At the time of his employment as a racing official be or have been within one year prior thereto, a member of the Legislature or an elective officer of this state, unless he is experienced and qualified as a racing official.

3. Have been prior to the time of his employment, or
shall be during the time of his employment, convicted of
an offense, which, under the laws of this state or any other
state or of the United States of America, constitutes a
felony or a violation of chapter sixty-one, article four of
this code.

4. In any manner have delegated to him the duties and
powers of the members of the commission, as director or
supervisor of racing, or in any other manner or capacity
whatsoever, except such authority as shall be necessary
in order to carry out fully and effectively the reasonable
regulations adopted and promulgated by the commission,
may be delegated to employees and/or representatives
of the commission.

Any steward employed by the commission or by a li-
censee thereof, shall be a person of integrity, and experi-
enced and qualified for such position by the generally
accepted practices and customs of horse racing in the
United States.

Any person violating any provision of this section shall
be guilty of a misdemeanor, and, upon conviction, shall
be confined in jail not less than six months nor more than
one year or be fined not less than five hundred nor more
than one thousand dollars, or, in the discretion of the
court, may be punished by both such fine and imprison-
ment. Venue of such offense shall be in the county, or
any one of the counties, wherein the person violating this
section carries out any duties of, or performs any work
for, the commission, which constitutes the basis of the
charge or complaint against him.

Sec. 7. Per Diem Tax on Tracks; Tax on Pool Con-
tributions; How Taxes Paid; Financial Responsibility
of Licensees; Contents of Licenses.—Any person oper-
atating thoroughbred or running type racing at any
horse race track one mile or more in length shall pay
each day upon which horse races are run, a license
tax of five hundred dollars; any race track less than
one mile in length shall pay for each day upon which
horse races are run a license tax of two hundred fifty
dollars: Provided, That the per diem tax shall not apply
to horse shows or county fairs at which racing is con-
ducted for not more than six days. Any person licensed
by the commission to conduct thoroughbred or running
type racing and to permit and conduct pari-mutuel wager-
ing under this article shall, in addition to the aforemen-
tioned tax, pay to the racing commission of the state of
West Virginia a tax of five and three-fourths per cent
of the total contribution to all pari-mutuel pools con-
ducted or made at any and every race meeting licensed
under this article. Such payments shall be made to the
commission or its agent after the last race of each day
and every day of each and every race meeting, and shall
be made from all contributions to all pari-mutuel pools
to each and every race of the day, which payment shall
be deposited with the treasurer of the state of West Vir-
ginia to the credit of the general revenue fund: Provided,
however, That a person operating any duly licensed horse
race track, having an average daily pari-mutuel pool of
one hundred fifty thousand dollars or less, per day, for
the licensed race meetings, of the preceding calendar
year, shall, in lieu of payment of the five and three-
fourths percent tax, paid to the state, from pari-mutuel
pools, as above provided, be permitted to conduct pari-
mutuel wagering at such horse race track, under this
article, on the basis of a daily tax which is fixed as fol-
lows: On a daily pari-mutuel pool not exceeding one
hundred fifty thousand dollars the daily tax shall be four
thousand dollars plus five and three-fourths per cent of
the daily pari-mutuel pool, if any, in excess of one hun-
dred fifty thousand dollars.

Any person making application for a license for a
meeting to be held on any track in the state of West
Virginia, shall, when required, furnish satisfactory evi-
dence to the commission of his or their ability to pay
license fees, purses, salaries of officials and other expenses
incident to the meeting. In the event the applicant is not
able to furnish such satisfactory evidence of his or their
ability to pay such expenses and fees, then the commis-
sion may require bond or other adequate security for not
more than four successive days before license is issued.

When issuing any license under this article, the com-
mision shall designate upon the face of the license, the
kind or type of horse racing for which the same is issued, the number of days the licensee is permitted to conduct horse racing of any kind, the location of the place or track or enclosure at which the horse racing thereby permitted is to be conducted, and such other provisions and conditions as the commission may wish to prescribe; no kind or type of horse racing shall be conducted by licensee other than that for which the license is issued.

Sec. 8. Disposition of Funds for Payment of Outstanding Pari-Mutuel Tickets; Awards to Resident Owners, etc., of Winning Horses.—All moneys held by any licensee for payment of outstanding pari-mutuel tickets, if not claimed within ninety days after the close of any race meeting, shall be turned over by the licensee to the commission within fifteen days after the expiration of such ninety-day period, and the licensee shall give such information as the commission may require concerning such outstanding and unredeemed tickets. All such moneys shall be deposited by the commission and kept by it in a special account to be known as “West Virginia Racing Commission Special Account—Unredeemed Pari-Mutuel Tickets.” Notice of the amount, time and place of such deposit shall be given by the commission, in writing, to the state treasurer. The commission shall cause to be published one time, in the week following the close of any race meeting, in some newspaper of general circulation in the county in which such race meeting was held, a notice to the holders of such unredeemed tickets, notifying them to present such tickets for the payment at the office of the commission in the city of Charleston within ninety days from the date of the publication of such notice.

Any such tickets that shall not be presented for payment within ninety days from the date of the publication of the notice shall thereafter be irredeemable, and the moneys theretofore held for the redemption of such tickets shall become the property of the commission, and be deposited, as aforesaid, and be expended as follows:

To the owner of the winning horse in any horse race, at any horse race track licensed in this state, provided
that the owner of such horse is at the time of such race, a bona fide resident of this state, a sum equal to ten per cent of the purse won by such horse.

To the breeder, that is the owner of the mare, of the winning horse in any horse race, at any horse race track licensed in this state, provided, that such breeder was, at the time such winning horse was foaled, a bona fide resident of this state, a sum equal to ten per cent of the purse won by such horse.

To the owner of the stallion which sired the winning horse in any horse race, at any horse race track licensed in this state, provided, that the mare which foaled such winning horse, was served by such stallion in this state, and the owner of such stallion, was, at the time of such service, a bona fide resident of this state, a sum equal to ten per cent of the purse won by such horse.

One person may qualify for any one or all of the awards aforesaid.

The cost for the publication of the notice provided for by this section shall be paid from the funds in the hands of the state treasurer collected from the license tax on pari-mutuel wagering, when not otherwise provided in the budget; but no such costs shall be paid unless an itemized account thereof, under oath, be first filed with the state auditor.

Sec. 9. Only Pari-Mutuel System of Wagering Permitted; Commission of Licensee on Pari-Mutuel Pools; Minors; Auditor.—A person licensed by the commission shall permit only the pari-mutuel system of wagering within the enclosure at which horse racing is held, and the commission deducted by any thoroughbred or running horse race licensee from the said pari-mutuel pools shall not exceed fifteen per cent of the total pari-mutuel pools for the day, including the license fee of the gross amount handled hereinbefore provided for, plus the breakage, which shall be made and calculated to the dime. Such breakage shall be retained by the licensee.

No holder of such license shall permit or allow any person under the age of twenty-one years to wager thereat, knowing or having reason to believe that such person
is under the age of twenty-one years. Any violation of
this paragraph shall be punishable by revocation of li-

cense.

An auditor of pari-mutuel pools shall be appointed by
the commission and shall be compensated by said commis-
sion. He shall be an experienced public accountant. Said
auditor shall have free access to the space or enclosure
where the pari-mutuel pool system of wagering is con-
ducted or calculated at any race meeting to which he
shall be assigned for the purpose of ascertaining whether
or not said licensee is retaining only the commission pro-
vided for in this section. He shall also, for the same pur-
poses only, have full and free access to all records and
papers pertaining to such pari-mutuel pool system of wa-
gering and shall report to the commission in writing,
under oath, whether or not the licensee has retained any
commissions in excess of those permitted under this
article.

CHAPTER 193

(House Bill No. 3—By Mr. Ford and Mr. Buch)

[Passed March 6, 1963; in effect July 1, 1964. Approved by the Governor.]

AN ACT to repeal sections forty-one through sixty-two, in-
clusive, article one, chapter thirty-one; article four-a,
chapter thirty-one; articles ten-a and ten-b, chapter thirty-
eight; sections eighteen through twenty-one, inclusive,
article eleven, chapter thirty-eight; articles fourteen and
fifteen, chapter thirty-eight; sections seven, eleven and
twelve, article one, chapter forty; articles two and three,
chapter forty; chapter forty-six; article five, chapter forty-
seven; and section one, article eight, chapter forty-seven,
all of the code of West Virginia, one thousand nine hun-
dred thirty-one, as amended; to repeal chapter fifteen, acts
of the Legislature of West Virginia, regular session, one
thousand nine hundred thirty-one, sometimes referred to
as article four-a, chapter thirty-one of said code, as amended by chapter twenty-one, acts of the Legislature of West Virginia, regular session, one thousand nine hundred forty-nine, and as further amended by chapter twenty-seven, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-five; and to enact in lieu thereof a new chapter forty-six of said code, being and constituting the uniform commercial code relating to certain commercial transactions and the rights, obligations, remedies and practices thereunto appertaining.

Be it enacted by the Legislature of West Virginia:

That sections forty-one through sixty-two, inclusive, article one, chapter thirty-one; article four-a, chapter thirty-one; articles ten-a and ten-b, chapter thirty-eight; sections eighteen through twenty-one, inclusive, article eleven, chapter thirty-eight; articles fourteen and fifteen, chapter thirty-eight; sections seven, eleven and twelve, article one, chapter forty; articles two and three, chapter forty; chapter forty-six; article five, chapter forty-seven; and section one, article eight, chapter forty-seven, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that chapter fifteen, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-one, sometimes referred to as article four-a, chapter thirty-one of said code, as amended by chapter twenty-one, acts of the Legislature of West Virginia, regular session, one thousand nine hundred forty-nine, and as further amended by chapter twenty-seven, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-five, be repealed; and that a new chapter forty-six of said code be enacted to read as follows:

CHAPTER 46. UNIFORM COMMERCIAL CODE

Article

2. Sales.
4. Bank Deposits and Collections.
5. Letters of Credit.
7. Warehouse Receipts, Bills of Lading and Other Documents of Title.
8. Investment Securities.
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10. Effective Date and Repealer.


PART 1. SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THIS CHAPTER

Section 1-101. Short title.
1-102. Purposes; rules of construction; variation by agreement.
1-103. Supplementary general principles of law applicable.
1-104. Construction against implicit repeal.
1-105. Territorial application of this chapter; parties' power to choose applicable law.
1-106. Remedies to be liberally administered.
1-107. Waiver or renunciation of claim or right after breach.
1-108. Severability.
1-109. Section captions.

PART 2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1-201. General definitions.
1-202. Prima facie evidence by third party documents.
1-203. Obligation of good faith.
1-204. Time; reasonable time; "seasonably".
1-205. Course of dealing and usage of trade.
1-206. Statute of frauds for kinds of personal property not otherwise covered.
1-207. Performance or acceptance under reservation of rights.
1-208. Option to accelerate at will.

PART 1. SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THIS CHAPTER

Section 1-101. Short Title.—This chapter shall be known as and may be cited as Uniform Commercial Code.

Sec. 1-102. Purposes; Rules of Construction; Variation by Agreement.—(1) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this chapter are

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among various jurisdictions.
14 (3) The effect of provisions of this chapter may be varied by agreement, except as otherwise provided in this chapter and except that the obligations of good faith, diligence, reasonableness and care prescribed by this chapter may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

22 (4) The presence in certain provisions of this chapter of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

27 (5) In this chapter unless the context otherwise requires
29 (a) words in the singular number include the plural, and in the plural include the singular;
31 (b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

Sec. 1-103. Supplementary General Principles of Law Applicable.—Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

Sec. 1-104. Construction Against Implicit Repeal.—This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Sec. 1-105. Territorial Application of this Chapter; Parties' Power to Choose Applicable Law.—(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall
govern their rights and duties. Failing such agreement
this chapter applies to transactions bearing an appropri-
ate relation to this state.

(2) Where one of the following provisions of this
chapter specifies the applicable law, that provision gov-
erns and a contrary agreement is effective only to the
extent permitted by the law (including the conflict of
laws rules) so specified:

Rights of creditors against sold goods. Section 2-402.
Applicability of the article on Bank Deposits and Col-
lections. Section 4-102.
Bulk transfers subject to the article on Bulk Transfers.
Section 6-102.
Applicability of the article on Investment Securities.
Section 8-106.
Policy and scope of the article on Secured Transactions.
Sections 9-102 and 9-103.

Sec. 1-106. Remedies to Be Liberally Administered.—
(1) The remedies provided by this chapter shall be
liberally administered to the end that the aggrieved party
may be put in as good a position as if the other party had
fully performed but neither consequential or special nor
penal damages may be had except as specifically provided
in this chapter or by other rule of law.

(2) Any right or obligation declared by this chapter
is enforceable by action unless the provision declaring it
specifies a different and limited effect.

Sec. 1-107. Waiver or Renunciation of Claim or Right
After Breach.—Any claim or right arising out of an al-
leged breach can be discharged in whole or in part with-
out consideration by a written waiver or renunciation
signed and delivered by the aggrieved party.

Sec. 1-108. Severability.—If any provision or clause of
this chapter or application thereof to any person or cir-
cumstances is held invalid, such invalidity shall not affect
other provisions or applications of this chapter which can
be given effect without the invalid provision or applica-
tion, and to this end the provisions of this chapter are
declared to be severable.
Sec. 1-109. Section Captions.—Section captions are parts of this chapter.

PART 2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

Sec. 1-201. General Definitions.—Subject to additional definitions contained in the subsequent articles of this chapter which are applicable to specific articles or parts thereof, and unless the context otherwise requires, in this chapter:

(1) “Action” in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) “Aggrieved party” means a party entitled to resort to a remedy.

(3) “Agreement” means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter (Sections 1-205 and 2-208). Whether an agreement has legal consequences is determined by the provisions of this chapter, if applicable; otherwise by the law of contracts (Section 1-103). (Compare “Contract”.)

(4) “Bank” means any person engaged in the business of banking.

(5) “Bearer” means the person in possession of an instrument, document of title, or security payable to bearer or indorsed in blank.

(6) “Bill of lading” means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. “Airbill” means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) “Branch” includes a separately incorporated foreign branch of a bank.

(8) “Burden of establishing” a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.
(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this chapter and any other applicable rules of law. (Compare "Agreement").

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is
entitled to receive, hold and dispose of the document and
the goods it covers. To be a document of title a document
must purport to be issued by or addressed to a bailee and
purport to cover goods in the bailee's possession which
are either identified or are fungible portions of an identi-

(16) "Fault" means wrongful act, omission or breach.
(17) "Fungible" with respect to goods or securities
means goods or securities of which any unit is, by nature
or usage of trade, the equivalent of any other like unit.
Goods which are not fungible shall be deemed fungible
for the purposes of this chapter to the extent that
under a particular agreement or document unlike units
are treated as equivalents.
(18) "Genuine" means free of forgery or counterfeiting.
(19) "Good faith" means honesty in fact in the con-
duct or transaction concerned.
(20) "Holder" means a person who is in possession of
a document of title or an instrument or an investment
security drawn, issued or indorsed to him or to his order
or to bearer or in blank.
(21) To "honor" is to pay or to accept and pay, or
where a credit so engages to purchase or discount a draft
complying with the terms of the credit.
(22) "Insolvency proceedings" includes any assign-
ment for the benefit of creditors or other proceedings
intended to liquidate or rehabilitate the estate of the per-
son involved.
(23) A person is "insolvent" who either has ceased to
pay his debts in the ordinary course of business or cannot
pay his debts as they become due or is insolvent within
the meaning of the federal bankruptcy law.
(24) "Money" means a medium of exchange author-
ized or adopted by a domestic or foreign government as
a part of its currency.
(25) A person has "notice" of a fact when
(a) he has actual knowledge of it; or
(b) he has received a notice or notification of it; or
115 (c) from all the facts and circumstances known to
116 him at the time in question he has reason to know that
117 it exists.
118 A person "knows" or has "knowledge" of a fact when
119 he has actual knowledge of it. "Discover" or "learn" or a
120 word or phrase of similar import refers to knowledge
121 rather than to reason to know. The time and circum-
122 stances under which a notice or notification may cease to
123 be effective are not determined by this chapter.
124 (26) A person "notifies" or "gives" a notice or notifica-
125 tion to another by taking such steps as may be reasonably
126 required to inform the other in ordinary course whether
127 or not such other actually comes to know of it. A person
128 "receives" a notice or notification when
129 (a) it comes to his attention; or
130 (b) it is duly delivered at the place of business
131 through which the contract was made or at any other
132 place held out by him as the place for receipt of such
133 communications.
134 (27) Notice, knowledge or a notice or notification re-
135 ceived by an organization is effective for a particular
136 transaction from the time when it is brought to the atten-
137 tion of the individual conducting that transaction, and in
138 any event from the time when it would have been
139 brought to his attention if the organization had exercised
140 due diligence. An organization exercises due diligence if
141 it maintains reasonable routines for communicating sig-
142 nificant information to the person conducting the trans-
143 action and there is reasonable compliance with the rou-
144 tines. Due diligence does not require an individual acting
145 for the organization to communicate information unless
146 such communication is part of his regular duties or unless
147 he has reason to know of the transaction and that the
148 transaction would be materially affected by the informa-
149 tion.
150 (28) "Organization" includes a corporation, govern-
151 ment or governmental subdivision or agency, business
152 trust, estate, trust, partnership or association, two or
153 more persons having a joint or common interest, or any
154 other legal or commercial entity.
(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this chapter.

(30) "Person" includes an individual or an organization (See Section 1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its non-existence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Section 2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts, chattel paper, or contract rights which is subject to Article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under Section 2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (Section 2-326). Whether a lease is in-
tended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) “Send” in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) “Signed” includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) “Surety” includes guarantor.

(41) “Telegram” includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) “Term” means that portion of an agreement which relates to a particular matter.

(43) “Unauthorized” signature or indorsement means one made without actual, implied or apparent authority and includes a forgery.

(44) “Value”. Except as otherwise provided with respect to negotiable instruments and bank collections (Sections 3-303, 4-208 and 4-209) a person gives “value” for rights if he acquires them (a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or
(b) as security for or in total or partial satisfaction of
a pre-existing claim; or
(c) by accepting delivery pursuant to a pre-existing
contract for purchase; or
(d) generally, in return for any consideration suffici-
et to support a simple contract.
(45) "Warehouse receipt" means a receipt issued by a
person engaged in the business of storing goods for hire.
(46) "Written" or "writing" includes printing, type-
writing or any other intentional reduction to tangible
form.

Sec. 1-202. Prima Facie Evidence by Third Party Docu-
ments.—A document in due form purporting to be a bill
of lading, policy or certificate of insurance, official
weigher's or inspector's certificate, consular invoice, or
any other document authorized or required by the con-
tact to be issued by a third party shall be prima facie evi-
dence of its own authenticity and genuineness and of the
facts stated in the document by the third party.

Sec. 1-203. Obligation of Good Faith.—Every contract
or duty within this chapter imposes an obligation of good
faith in its performance or enforcement.

Sec. 1-204. Time; Reasonable Time; "Seasonably".—(1)
Whenever this chapter requires any action to be taken
within a reasonable time, any time which is not mani-
festly unreasonable may be fixed by agreement.
(2) What is a reasonable time for taking any action
depends on the nature, purpose and circumstances of such
action.
(3) An action is taken "seasonably" when it is taken
at or within the time agreed or if no time is agreed at or
within a reasonable time.

Sec. 1-205. Course of Dealing and Usage of Trade.—(1)
A course of dealing is a sequence of previous conduct be-
tween the parties to a particular transaction which is
fairly to be regarded as establishing a common basis of
understanding for interpreting their expressions and
other conduct.
A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

Sec. 1-206. Statute of Frauds for Kinds of Personal Property Not Otherwise Covered.—(1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (Section 2-201) nor of securities (Section 8-319) nor to security agreements (Section 9-203).
Sec. 1-207. Performance or Acceptance Under Reservation of Rights.—A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as “without prejudice”, “under protest” or the like are sufficient.

Sec. 1-208. Option to Accelerate at Will.—A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral “at will” or “when he deems himself insecure” or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

Article 2. Sales.

PART 1. SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

Section
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2-107. Goods to be severed from realty: recording.

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PART 1. SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

Section 2-101. Short Title.—This article shall be known and may be cited as Uniform Commercial Code—Sales.

Sec. 2-102. Scope; Certain Security and Other Transactions Excluded From This Article.—Unless the context otherwise requires, this article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction.
nor does this article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

Sec. 2-103. Definitions and Index of Definitions.—(1)
In this article unless the context otherwise requires
(a) “Buyer” means a person who buys or contracts to buy goods.
(b) “Good faith” in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.
(c) “Receipt” of goods means taking physical possession of them.
(d) “Seller” means a person who sells or contracts to sell goods.
(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

“Acceptance”. Section 2-606.
“Banker’s credit”. Section 2-325.
“Between merchants”. Section 2-104.
“Cancellation”. Section 2-106 (4).
“Commercial unit”. Section 2-105.
“Confirmed credit”. Section 2-325.
“Conforming to contract”. Section 2-106.
“Contract for sale”. Section 2-106.
“Cover”. Section 2-712.
“Entrusting”. Section 2-403.
“Financing agency”. Section 2-104.
“Future goods”. Section 2-105.
“Goods”. Section 2-105.
“Identification”. Section 2-501.
“Installment contract”. Section 2-612.
“Letter of Credit”. Section 2-325.
“Lot”. Section 2-105.
“Merchant”. Section 2-104.
“Overseas”. Section 2-323.
“Person in position of seller”. Section 2-707.
“Present sale”. Section 2-106.
“Sale”. Section 2-106.
“Sale on approval”. Section 2-326.
“Sale or return”. Section 2-326.
“Termination”. Section 2-106.
(3) The following definitions in other articles of this chapter apply to this article:
“Check”. Section 3-104.
“Consignee”. Section 7-102.
“Consignor”. Section 7-102.
“Dishonor”. Section 3-507.
“Draft”. Section 3-104.
(4) In addition Article 1 of this chapter contains general definitions and principles of construction and interpretation throughout this article.

Sec. 2-104. Definitions: “Merchant”; “Between Merchants”; “Financing Agency”.—(1) “Merchant” means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.
(2) “Financing agency” means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller’s draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. “Financing agency” includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (Section 2-707).
(3) “Between merchants” means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

Sec. 2-105. Definitions: Transferability; “Goods”; “Future” Goods; “Lot”; “Commercial Unit”.—(1) “Goods” mean all things (including specially manufactured goods)
which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (Section 2-107).

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

Sec. 2-106. Definitions: "Contract"; "Agreement"; "Contract for Sale"; "Sale"; "Present Sale"; "Conforming" to Contract; "Termination"; "Cancellation".—(1) In this article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title
from the seller to the buyer for a price (Section 2-401). A
"present sale" means a sale which is accomplished by the
making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

Sec. 2-107. Goods to Be Severed From Realty: Recording.—(1) A contract for the sale of timber, minerals or the like or a structure or its materials to be removed from realty is a contract for the sale of goods within this article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) is a contract for the sale of goods within this article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land
and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

PART 2. FORM, FORMATION AND READJUSTMENT OF CONTRACT

Sec. 2-201. Formal Requirements; Statute of Frauds.—

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within ten days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been
made and accepted or which have been received and ac-
cepted (Section 2-606).

Sec. 2-202. Final Written Expression: Parol or Extrinsic Evidence.—Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final ex-
pression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) by course of dealing or usage of trade (Section 1-
205) or by course of performance (Section 2-208); and
(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Sec. 2-203. Seals Inoperative.—The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

Sec. 2-204. Formation in General.—(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.
(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its mak-
ing is undetermined.
(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the par-
ties have intended to make a contract and there is a rea-
sonably certain basis for giving an appropriate remedy.

Sec. 2-205. Firm Offers.—An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such
term of assurance on a form supplied by the offeree must be separately signed by the offeror.

Sec. 2-206. Offer and Acceptance in Formation of Contract.—(1) Unless otherwise unambiguously indicated by the language or circumstances:

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

Sec. 2-207. Additional Terms in Acceptance or Confirmation.—(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not other-
Sec. 2-208. Course of Performance or Practical Construction.—(1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (Section 1-205).

(3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.

Sec. 2-209. Modification, Rescission and Waiver.—(1) An agreement modifying a contract within this article needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this article (Section 2-201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.
(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

Sec. 2-210. Delegation of Performance; Assignment of Rights.—(1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (Section 2-609).
PART 3. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

Sec. 2-301. General Obligations of Parties.—The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

Sec. 2-302. Unconscionable Contract or Clause.—(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

Sec. 2-303. Allocation or Division of Risks.—Where this article allocates a risk or a burden as between the parties “unless otherwise agreed”, the agreement may not only shift the allocation but may also divide the risk or burden.

Sec. 2-304. Price Payable in Money, Goods, Realty, or Otherwise.—(1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

Sec. 2-305. Open Price Term.—(1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if

(a) nothing is said as to price; or
(b) the price is left to be agreed by the parties and they fail to agree; or
(c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

Sec. 2-306. Output, Requirements and Exclusive Dealings.—(1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

Sec. 2-307. Delivery in Single Lot or Several Lots.—Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.
Sec. 2-308. Absence of Specified Place for Delivery.—
Unless otherwise agreed
(a) the place for delivery of goods is the seller's place
of business or if he has none his residence; but
(b) in a contract for sale of identified goods which to
the knowledge of the parties at the time of contracting
are in some other place, that place is the place for their
delivery; and
(c) documents of title may be delivered through cus-
tomary banking channels.

Sec. 2-309. Absence of Specific Time Provisions; Notice
of Termination.—(1) The time for shipment or delivery
or any other action under a contract if not provided in this
article or agreed upon shall be a reasonable time.
(2) Where the contract provides for successive per-
formances but is indefinite in duration it is valid for a rea-
sonable time but unless otherwise agreed may be termi-
nated at any time by either party.
(3) Termination of a contract by one party except on
the happening of an agreed event requires that reasonable
notification be received by the other party and an agree­
ment dispensing with notification is invalid if its operation
would be unconscionable.

Sec. 2-310. Open Time for Payment or Running of
Credit; Authority to Ship Under Reservation.—Unless
otherwise agreed
(a) payment is due at the time and place at which the
buyer is to receive the goods even though the place of
shipment is the place of delivery; and
(b) if the seller is authorized to send the goods he
may ship them under reservation, and may tender the doc-
uments of title, but the buyer may inspect the goods after
their arrival before payment is due unless such inspection
is inconsistent with the terms of the contract (Section 2-
513); and
(c) if delivery is authorized and made by way of doc-
uments of title otherwise than by subsection (b) then pay-
ment is due at the time and place at which the buyer is to
receive the documents regardless of where the goods are
to be received; and
(d) where the seller is required or authorized to ship
the goods on credit the credit period runs from the time
of shipment but post-dating the invoice or delaying its dis-
patch will correspondingly delay the starting of the credit
period.

Sec. 2-311. Options and Cooperation Respecting Per-
formance.—(1) An agreement for sale which is otherwise
sufficiently definite (subsection (3) of Section 2-204) to
be a contract is not made invalid by the fact that it leaves
particulars of performance to be specified by one of the
parties. Any such specification must be made in good
faith and within limits set by commercial reasonableness.
(2) Unless otherwise agreed specifications relating to
assortment of the goods are at the buyer’s option and ex­
cept as otherwise provided in subsections (1) (c) and (3)
of Section 2-319 specifications or arrangements relating to
shipment are at the seller’s option.
(3) Where such specification would materially affect
the other party’s performance but is not seasonably made
or where one party’s cooperation is necessary to the
agreed performance of the other but is not seasonably
forthcoming, the other party in addition to all other rem­
edies
(a) is excused for any resulting delay in his own per­
formance; and
(b) may also either proceed to perform in any reason­
able manner or after the time for a material part of his
own performance treat the failure to specify or to cooper­
ate as a breach by failure to deliver or accept the goods.

Sec. 2-312. Warranty of Title and Against Infringe-
ment; Buyer’s Obligation Against Infringement.—(1) Sub­
ject to subsection (2) there is in a contract for sale a
warranty by the seller that
(a) the title conveyed shall be good, and its transfer
rightful; and
(b) the goods shall be delivered free from any securi-
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Section 2-312. Implied Warranty: Nonconformity of Description; Nonconformity of Sample; Nonconformity of Quality or Performance.—(1) Except as provided in subsection (2), a warranty that the goods shall conform with the description is implied if the seller is a merchant with respect to the goods and the buyer relies on the seller's skill and judgment to pick or grade it.

(2) A warranty that the goods shall be merchantable is implied if the seller is a merchant with respect to the goods and has knowledge of the nonconformity or if the buyer relies on the seller's skill and judgment to discover the nonconformity.

Sec. 2-313. Express Warranties by Affirmation, Promise, Description, Sample.—(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as “warrant” or “guarantee” or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

Sec. 2-314. Implied Warranty: Merchantability; Usage of Trade.—(1) Unless excluded or modified (Section 2-316), a warranty that the goods shall be merchantable is im-
plied in a contract for their sale if the seller is a merchant
with respect to goods of that kind. Under this section the
serving for value of food or drink to be consumed either
on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as
(a) pass without objection in the trade under the con-
tract description; and
(b) in the case of fungible goods, are of fair average
quality within the description; and
(c) are fit for the ordinary purposes for which such
goods are used; and
(d) run, within the variations permitted by the agree-
ment, of even kind, quality and quantity within each unit
and among all units involved; and
(e) are adequately contained, packaged, and labeled
as the agreement may require; and
(f) conform to the promises or affirmations of fact
made on the container or label if any.

(3) Unless excluded or modified (Section 2-316) other
implied warranties may arise from course of dealing or
usage of trade.

Sec. 2-315. Implied Warranty: Fitness for Particular
Purpose.—Where the seller at the time of contracting has
reason to know any particular purpose for which the
goods are required and that the buyer is relying on the
seller's skill or judgment to select or furnish suitable
goods, there is unless excluded or modified under the next
section an implied warranty that the goods shall be fit for
such purpose.

Sec. 2-316. Exclusion or Modification of Warranties.—
(1) Words or conduct relevant to the creation of an ex-
press warranty and words or conduct tending to negate or
limit warranty shall be construed wherever reasonable as
consistent with each other; but subject to the provisions
of this article on parol or extrinsic evidence (Section 2-
202) negation or limitation is inoperative to the extent
that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify
the implied warranty of merchantability or any part of it
the language must mention merchantability and in case of
a writing must be conspicuous, and to exclude or modify
any implied warranty of fitness the exclusion must be by
a writing and conspicuous. Language to exclude all im-
plied warranties of fitness is sufficient if it states, for ex-
ample, that “There are no warranties which extend be-
"the description on the face hereof”.

(3) Notwithstanding subsection (2)

(a) unless the circumstances indicate otherwise, all
implied warranties are excluded by expressions like “as
is”, “with all faults” or other language which in common
understanding calls the buyer’s attention to the exclusion
of warranties and makes plain that there is no implied
warranty; and

(b) when the buyer before entering into the contract
has examined the goods or the sample or model as fully
as he desired or has refused to examine the goods there is
no implied warranty with regard to defects which an ex-
amination ought in the circumstances to have revealed to
him; and

(c) an implied warranty can also be excluded or modi-
fied by course of dealing or course of performance or
usage of trade.

(4) Remedies for breach of warranty can be limited in
accordance with the provisions of this article on liquida-
tion or limitation of damages and on contractual modifi-
cation of remedy (Sections 2-718 and 2-719).

Sec. 2-317. Cumulation and Conflict of Warranties Ex-
press or Implied.—Warranties whether express or implied
shall be construed as consistent with each other and as
cumulative, but if such construction is unreasonable the
intention of the parties shall determine which warranty
is dominant. In ascertaining that intention the following
rules apply:

(a) Exact or technical specifications displace an incon-
sistent sample or model or general language of descrip-
tion.

(b) A sample from an existing bulk displaces incon-
sistent general language of description.
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13 (c) Express warranties displace inconsistent implied
14 warranties other than an implied warranty of fitness for
15 a particular purpose.

Sec. 2-318. Third Party Beneficiaries of Warranties Ex-
press or Implied.—A seller’s warranty whether express or
implied extends to any natural person who is in the fam-
ily or household of his buyer or who is a guest in his home
if it is reasonable to expect that such person may use, con-
sume or be affected by the goods and who is injured in
person by breach of the warranty. A seller may not ex-
clude or limit the operation of this section.

Sec. 2-319. F.O.B. and F.A.S. Terms.—(1) Unless other-
wise agreed the term F.O.B. (which means “free on
board”) at a named place, even though used only in con-
nection with the stated price, is a delivery term under
which
(a) when the term is F.O.B. the place of shipment, the
seller must at that place ship the goods in the manner pro-
vided in this article (Section 2-504) and bear the expense
and risk of putting them into the possession of the carrier;
or
(b) when the term is F.O.B. the place of destination,
the seller must at his own expense and risk transport the
goods to that place and there tender delivery of them in
the manner provided in this article (Section 2-503);
(c) when under either (a) or (b) the term is also F.O.B.
vessel, car or other vehicle, the seller must in addi-
tion at his own expense and risk load the goods on board.
If the term is F.O.B. vessel the buyer must name the ves-
sel and in an appropriate case the seller must comply with
the provisions of this article on the form of bill of lading
(Section 2-323).

(2) Unless otherwise agreed the term F.A.S. vessel
(which means “free alongside”) at a named port, even
though used only in connection with the stated price, is a
delivery term under which the seller must
(a) at his own expense and risk deliver the goods
alongside the vessel in the manner usual in that port or
on a dock designated and provided by the buyer; and
(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1) (a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this article (Section 2-311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

Sec. 2-320. C.I.F. and C. & F. Terms.—(1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account
of whom it may concern; but the seller may add to the
price the amount of the premium for any such war risk
insurance; and
(d) prepare an invoice of the goods and procure any
other documents required to effect shipment or to comply
with the contract; and
(e) forward and tender with commercial promptness
all the documents in due form and with any indorsement
necessary to perfect the buyer's rights.
(3) Unless otherwise agreed the term C. & F. or its
equivalent has the same effect and imposes upon the seller
the same obligations and risks as a C.I.F. term except the
obligation as to insurance.
(4) Under the term C.I.F. or C. & F. unless otherwise
agreed the buyer must make payment against tender of
the required documents and the seller may not tender nor
the buyer demand delivery of the goods in substitution
for the documents.

Sec. 2-321. C.I.F. or C. & F.: "Net Landed Weights";
"Payment on Arrival"; Warranty of Condition on Arrival.
—Under a contract containing a term C.I.F. or C. & F.
(1) Where the price is based on or is to be adjusted
according to "net landed weights", "delivered weights",
"out turn" quantity or quality or the like, unless other-
wise agreed the seller must reasonably estimate the price.
The payment due on tender of the documents called for
by the contract is the amount so estimated, but after final
adjustment of the price a settlement must be made with
commercial promptness.
(2) An agreement described in subsection (1) or any
warranty of quality or condition of the goods on arrival
places upon the seller the risk of ordinary deterioration,
shrinkage and the like in transportation but has no effect
on the place or time of identification to the contract for
sale or delivery or on the passing of the risk of loss.
(3) Unless otherwise agreed where the contract pro-
vides for payment on or after arrival of the goods the
seller must before payment allow such preliminary inspec-
tion as is feasible; but if the goods are lost delivery of the
documents and payment are due when the goods should have arrived.

Sec. 2-322. Delivery “Ex-Ship”.—(1) Unless otherwise agreed a term for delivery of goods “ex-ship” (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed
(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and
(b) the risk of loss does not pass to the buyer until the goods leave the ship’s tackle or are otherwise properly unloaded.

Sec. 2-323. Form of Bill of Lading Required in Overseas Shipment; “Overseas”.—(1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set
(a) due tender of a single part is acceptable within the provisions of this article on cure of improper delivery (subsection (1) of Section 2-508); and
(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contem-
age of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

Sec. 2-324. "No Arrival, No Sale" Term.—Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed,

(a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (Section 2-613).

Sec. 2-325. "Letter of Credit" Term; "Confirmed Credit".—(1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term “letter of credit” or “banker's credit” in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term “confirmed credit” means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market.

Sec. 2-326. Sale on Approval and Sale or Return; Consignment Sales and Rights of Creditors.—(1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(a) a “sale on approval” if the goods are delivered primarily for use, and

(b) a “sale or return” if the goods are delivered primarily for resale.
(2) Except as provided in subsection (3), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery

(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or

(c) complies with the filing provisions of the article on Secured Transactions (Article 9).

(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this article (Section 2-201) and as contradicting the sale aspect of the contract within the provisions of this article on parol or extrinsic evidence (Section 2-202).

Sec. 2-327. Special Incidents of Sale on Approval and Sale or Return.—(1) Under a sale on approval unless otherwise agreed

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the
seller of election to return the goods is acceptance, and if
the goods conform to the contract acceptance of any part
is acceptance of the whole; and
(c) after due notification of election to return, the re-
turn is at the seller's risk and expense but a merchant
buyer must follow any reasonable instructions.
(2) Under a sale or return unless otherwise agreed
(a) the option to return extends to the whole or any
commercial unit of the goods while in substantially their
original condition, but must be exercised seasonably; and
(b) the return is at the buyer's risk and expense.

Sec. 2-328. Sale by Auction.—(1) In a sale by auction
if goods are put up in lots each lot is the subject of a
separate sale.
(2) A sale by auction is complete when the auctioneer
so announces by the fall of the hammer or in other cus-
tomary manner. Where a bid is made while the hammer
is falling in acceptance of a prior bid the auctioneer may
in his discretion reopen the bidding or declare the goods
sold under the bid on which the hammer was falling.
(3) Such a sale is with reserve unless the goods are in
explicit terms put up without reserve. In an auction
with reserve the auctioneer may withdraw the goods at
any time until he announces completion of the sale. In an
auction without reserve, after the auctioneer calls for bids
on an article or lot, that article or lot cannot be withdrawn
unless no bid is made within a reasonable time. In either
case a bidder may retract his bid until the auctioneer's
announcement of completion of the sale, but a bidder's re-
traction does not revive any previous bid.
(4) If the auctioneer knowingly receives a bid on the
seller's behalf or the seller makes or procures such a bid,
and notice has not been given that liberty for such bidding
is reserved, the buyer may at his option avoid the sale or
take the goods at the price of the last good faith bid prior
to the completion of the sale. This subsection shall not
apply to any bid at a forced sale.
PART 4. TITLE, CREDITORS AND GOOD FAITH PURCHASERS

Sec. 2-401. Passing of Title; Reservation for Security; Limited Application of This Section.—Each provision of this article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (Section 2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this chapter. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the article on Secured Transactions (Article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title
passes at the time when and the place where he delivers such documents; or
(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.
(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a “sale”.

Sec. 2-402. Rights of Seller’s Creditors Against Sold Goods.—(1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer’s rights to recover the goods under this article (Sections 2-502 and 2-716).
(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.
(3) Nothing in this article shall be deemed to impair the rights of creditors of the seller
(a) under the provisions of the article on Secured Transactions (Article 9); or
(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this article constitute the transaction a fraudulent transfer or voidable preference.

Sec. 2-403. Power to Transfer; Good Faith Purchase of Goods; “Entrusting”.—(1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires
rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though
(a) the transferor was deceived as to the identity of the purchaser, or
(b) the delivery was in exchange for a check which is later dishonored, or
(c) it was agreed that the transaction was to be a "cash sale", or
(d) the delivery was procured through fraud punishable as larcenous under the criminal law.
(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.
(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.
(4) The rights of other purchasers of goods and of lien creditors are governed by the articles on Secured Transactions (Article 9), Bulk Transfers (Article 6) and Documents of Title (Article 7).

PART 5. PERFORMANCE

Sec. 2-501. Insurable Interest in Goods; Manner of Identification of Goods.—(1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs
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Sec. 2-502. Buyer's Right to Goods on Seller's Insolvency.—(1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

Sec. 2-503. Manner of Seller's Tender of Delivery.—(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for
tender are determined by the agreement and this article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form, except as provided in this article with respect to bills of lading in a set (subsection (2) of Section 2-323); and

(b) tender through customary banking channels is
sufficient and dishonor of a draft accompanying the documents constitutes non-acceptance or rejection.

Sec. 2-505. Seller’s Shipment Under Reservation.—(1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller’s expectation of transferring that interest to the person named.

(b) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of Section 2-507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the
Sec. 2-506. Rights of Financing Agency.—(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face.

Sec. 2-507. Effect of Seller's Tender; Delivery on Condition.—(1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

Sec. 2-508. Cure by Seller of Improper Tender or Delivery; Replacement.—(1) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

Sec. 2-509. Risk of Loss in the Absence of Breach.—(1)
Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (Section 2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of a non-negotiable document of title or other written direction to deliver, as provided in subsection (4) (b) of Section 2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this article on sale on approval (Section 2-327) and on effect of breach on risk of loss (Section 2-510).

Sec. 2-510. Effect of Breach on Risk of Loss.—(1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already
identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

Sec. 2-511. Tender of Payment by Buyer; Payment by Check.—(1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this chapter on the effect of an instrument on an obligation (Section 3-802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

Sec. 2-512. Payment by Buyer Before Inspection.—(1) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

(a) the non-conformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this chapter (Section 5-114).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

Sec. 2-513. Buyer's Right to Inspection of Goods.—(1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.
(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this article on C.I.F. contracts (subsection (3) of Section 2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

(a) for delivery "C.O.D." or on other like terms; or
(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

Sec. 2-514. When Documents Deliverable on Acceptance; When on Payment.—Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment.

Sec. 2-515. Preserving Evidence of Goods in Dispute.—In furtherance of the adjustment of any claim or dispute (a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and
(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.
PART 6. BREACH, REPUDIATION AND EXCUSE

Sec. 2-601. Buyer's Rights on Improper Delivery.—
2 Subject to the provisions of this article on breach in installment contracts (Section 2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (Sections 2-718 and 2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may
8 (a) reject the whole; or
9 (b) accept the whole; or
10 (c) accept any commercial unit or units and reject the rest.

Sec. 2-602. Manner and Effect of Rightful Rejection.
2 — (1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.
3 (2) Subject to the provisions of the two following sections on rejected goods (Sections 2-603 and 2-604),
4 (a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and
5 (b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this article (subsection (3) of Section 2-711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but
6 (c) the buyer has no further obligations with regard to goods rightfully rejected.
7 (3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this article on seller's remedies in general (Section 2-703).

Sec. 2-603. Merchant Buyer's Duties as to Rightfully Rejected Goods.—(1) Subject to any security interest in the buyer (subsection (3) of Section 2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection
of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

Sec. 2-604. Buyer's Options as to Salvage of Rightfully Rejected Goods.—Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

Sec. 2-605. Waiver of Buyer's Objections by Failure to Particularize.—(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.
(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents.

Sec. 2-606. What Constitutes Acceptance of Goods.—
(1) Acceptance of goods occurs when the buyer
(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or
(b) fails to make an effective rejection (subsection (1) of Section 2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or
(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.
(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

Sec. 2-607. Effect of Acceptance; Notice of Breach; Burden of Establishing Breach After Acceptance; Notice of Claim or Litigation to Person Answerable Over.—(1) The buyer must pay at the contract rate for any goods accepted.
(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this article for non-conformity.
(3) Where a tender has been accepted
(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and
(b) if the claim is one for infringement or the like (subsection (3) of Section 2-312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of
21 the litigation or be barred from any remedy over for
22 liability established by the litigation.
23 (4) The burden is on the buyer to establish any
24 breach with respect to the goods accepted.
25 (5) Where the buyer is sued for breach of a warranty
26 or other obligation for which his seller is answerable over
27 (a) he may give his seller written notice of the litiga-
28 tion. If the notice states that the seller may come in and
29 defend and that if the seller does not do so he will be
30 bound in any action against him by his buyer by any de-
31 termination of fact common to the two litigations, then
32 unless the seller after seasonable receipt of the notice
33 does come in and defend he is so bound.
34 (b) if the claim is one for infringement or the like
35 (subsection (3) of Section 2-312) the original seller may
36 demand in writing that his buyer turn over to him control
37 of the litigation including settlement or else be barred
38 from any remedy over and if he also agrees to bear all ex-
39 penses and to satisfy any adverse judgment, then unless
40 the buyer after seasonable receipt of the demand does
41 turn over control the buyer is so barred.
42 (6) The provisions of subsections (3), (4) and (5)
43 apply to any obligation of a buyer to hold the seller harm-
44 less against infringement or the like (subsection (3) of
45 Section 2-312).

Sec. 2-608. Revocation of Acceptance in Whole or in
2 Part.—(1) The buyer may revoke his acceptance of a lot
3 or commercial unit whose non-conformity substantially
4 impairs its value to him if he has accepted it
5 (a) on the reasonable assumption that its non-
6 conformity would be cured and it has not been seasonably
7 cured; or
8 (b) without discovery of such non-conformity if his
9 acceptance was reasonably induced either by the difficulty
10 of discovery before acceptance or by the seller's assur-
11 ances.
12 (2) Revocation of acceptance must occur within a
13 reasonable time after the buyer discovers or should have
14 discovered the ground for it and before any substantial
change in condition of the goods which is not caused by
their own defects. It is not effective until the buyer
notifies the seller of it.

(3) A buyer who so revokes has the same rights and
duties with regard to the goods involved as if he had re­
jected them.

Sec. 2-609. Right to Adequate Assurance of Perform­
ance.—(1) A contract for sale imposes an obligation on
each party that the other's expectation of receiving due
performance will not be impaired. When reasonable
grounds for insecurity arise with respect to the perform­
ance of either party the other may in writing demand
adequate assurance of due performance and until he re­
ceives such assurance may if commercially reasonable
suspend any performance for which he has not already
received the agreed return.

(2) Between merchants the reasonableness of grounds
for insecurity and the adequacy of any assurance offered
shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment
does not prejudice the aggrieved party's right to demand
adequate assurance of future performance.

(4) After receipt of a justified demand failure to pro­
vide within a reasonable time not exceeding thirty days
such assurance of due performance as is adequate under
the circumstances of the particular case is a repudiation
of the contract.

Sec. 2-610. Anticipatory Repudiation.—When either
party repudiates the contract with respect to a perform­
ance not yet due the loss of which will substantially im­
pair the value of the contract to the other, the aggrieved
party may

(a) for a commercially reasonable time await per­
formance by the repudiating party; or

(b) resort to any remedy for breach (Section 2-703 or
Section 2-711), even though he has notified the repudiat­ing
party that he would await the latter's performance
and has urged retraction; and

(c) in either case suspend his own performance or
13 proceed in accordance with the provisions of this article
14 on the seller's right to identify goods to the contract not-
15 withstanding breach or to salvage unfinished goods (Sec-
16 tion 2-704).

Sec. 2-611. Retraction of Anticipatory Repudiation.—
2 (1) Until the repudiating party's next performance is
due he can retract his repudiation unless the aggrieved
party has since the repudiation cancelled or materially
changed his position or otherwise indicated that he con-
siders the repudiation final.
3 (2) Retraction may be by any method which clearly
indicates to the aggrieved party that the repudiating
party intends to perform, but must include any assurance
justifiably demanded under the provisions of this article
(Section 2-609).
(3) Retraction reinstates the repudiating party's
rights under the contract with due excuse and allowance
to the aggrieved party for any delay occasioned by the
repudiation.

Sec. 2-612. “Installment Contract”; Breach.—(1) An
“installment contract” is one which requires or authorizes
the delivery of goods in separate lots to be separately ac-
cepted, even though the contract contains a clause “each
delivery is a separate contract” or its equivalent.
(2) The buyer may reject any installment which is
non-conforming if the non-conformity substantially im-
pairs the value of that installment and cannot be cured or
if the non-conformity is a defect in the required doc-
uments; but if the non-conformity does not fall within sub-
section (3) and the seller gives adequate assurance of its
cure the buyer must accept that installment.
(3) Whenever non-conformity or default with respect
to one or more installments substantially impairs the
value of the whole contract there is a breach of the whole.
But the aggrieved party reinstates the contract if he ac-
cepts a non-conforming installment without seasonably
notifying of cancellation or if he brings an action with re-
spect only to past installments or demands performance
as to future installments.
Sec. 2-613. Casualty to Identified Goods.—Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a “no arrival, no sale” term (Section 2-324) then
(a) if the loss is total the contract is avoided; and
(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

Sec. 2-614. Substituted Performance.—(1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.
(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer’s obligation unless the regulation is discriminatory, oppressive or predatory.

Sec. 2-615. Excuse by Failure of Presupposed Conditions.—Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:
(a) Delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or
by compliance in good faith with any applicable foreign
or domestic governmental regulation or order whether or
not it later proves to be invalid.
(b) Where the causes mentioned in paragraph (a) af-
fect only a part of the seller’s capacity to perform, he must
allocate production and deliveries among his customers
but may at his option include regular customers not then
under contract as well as his own requirements for further
manufacture. He may so allocate in any manner which
is fair and reasonable.
(c) The seller must notify the buyer seasonably that
there will be delay or non-delivery and, when allocation
is required under paragraph (b), of the estimated quota
thus made available for the buyer.

Sec. 2-616. Procedure on Notice Claiming Excuse.—(1)
Where the buyer receives notification of a material or in-
definite delay or an allocation justified under the preced-
ing section he may by written notification to the seller as
to any delivery concerned, and where the prospective de-
iciency substantially impairs the value of the whole con-
tract under the provisions of this article relating to breach
of installment contracts (Section 2-612), then also as to
the whole,
(a) terminate and thereby discharge any unexecuted
portion of the contract; or
(b) modify the contract by agreeing to take his avail-
able quota in substitution.
(2) If after receipt of such notification from the seller
the buyer fails so to modify the contract within a reason-
able time not exceeding thirty days the contract lapses
with respect to any deliveries affected.
(3) The provisions of this section may not be negated
by agreement except in so far as the seller has assumed
a greater obligation under the preceding section.

PART 7. REMEDIES

Sec. 2-701. Remedies for Breach of Collateral Con-
tracts Not Impaired.—Remedies for breach of any obliga-
tion or promise collateral or ancillary to a contract for
sale are not impaired by the provisions of this article.
Sec. 2-702. Seller's Remedies on Discovery of Buyer's Insolvency.—(1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this article (Section 2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser or lien creditor under this article (Section 2-403). Successful reclamation of goods excludes all other remedies with respect to them.

Sec. 2-703. Seller's Remedies in General.—Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (Section 2-612), then also with respect to the whole undelivered balance, the aggrieved seller may

(a) withhold delivery of such goods;
(b) stop delivery by any bailee as hereafter provided (Section 2-705);
(c) proceed under the next section respecting goods still unidentified to the contract;
(d) resell and recover damages as hereafter provided (Section 2-706);
(e) recover damages for non-acceptance (Section 2-708) or in a proper case the price (Section 2-709);
(f) cancel.

Sec. 2-704. Seller's Right to Identify Goods to the Con-
tract Notwithstanding Breach or to Salvage Unfinished Goods.—(1) An aggrieved seller under the preceding section may
(a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;
(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.
(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

Sec. 2-705. Seller's Stoppage of Delivery in Transit or Otherwise.—(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (Section 2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.
(2) As against such buyer the seller may stop delivery until
(a) receipt of the goods by the buyer; or
(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or
(c) such acknowledgment to the buyer by a carrier by re-shipment or as warehouseman; or
(d) negotiation to the buyer of any negotiable document of title covering the goods.
(3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.
(b) After such notification the bailee must hold and
deliver the goods according to the directions of the seller
but the seller is liable to the bailee for any ensuing
charges or damages.

(c) If a negotiable document of title has been issued
for goods the bailee is not obliged to obey a notification to
stop until surrender of the document.

(d) A carrier who has issued a non-negotiable bill of
lading is not obliged to obey a notification to stop received
from a person other than the consignor.

Sec. 2-706. Seller's Resale Including Contract for Re-
sale.—(1) Under the conditions stated in Section 2-703
on seller's remedies, the seller may resell the goods con-
cerned or the undelivered balance thereof. Where the re-
sale is made in good faith and in a commercially reasona-
ble manner the seller may recover the difference between
the resale price and the contract price together with any
incidental damages allowed under the provisions of this
article (Section 2-710), but less expenses saved in conse-
quence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or
unless otherwise agreed resale may be at public or private
sale including sale by way of one or more contracts to sell
or of identification to an existing contract of the seller.
Sale may be as a unit or in parcels and at any time and
place and on any terms but every aspect of the sale in-
cluding the method, manner, time, place and terms must
be commercially reasonable. The resale must be reasona-
bly identified as referring to the broken contract, but it is
not necessary that the goods be in existence or that any
or all of them have been identified to the contract before
the breach.

(3) Where the resale is at private sale the seller must
give the buyer reasonable notification of his intention to
resell.

(4) Where the resale is at public sale
(a) only identified goods can be sold except where
there is a recognized market for a public sale of futures
in goods of the kind; and
(b) it must be made at a usual place or market for
public sale if one is reasonably available and except in
the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (Section 2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of Section 2-711).

Sec. 2-707. “Person in the Position of a Seller”.—(1) A person in the position of a seller” includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this article withhold or stop delivery (Section 2-705) and resell (Section 2-706) and recover incidental damages (Section 2-710).

Sec. 2-708. Seller’s Damages for Non-acceptance or Repudiation.—(1) Subject to subsection (2) and to the provisions of this article with respect to proof of market price (Section 2-723), the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this article (Section 2-710), but less expenses saved in consequence of the buyer’s breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as
performance would have done then the measure of dam-
gages is the profit (including reasonable overhead) which
the seller would have made from full performance by the
buyer, together with any incidental damages provided in
this article (Section 2-710), due allowance for costs rea-
sonably incurred and due credit for payments or proceeds
of resale.

Sec. 2-709. Action for the Price.—(1) When the buyer
fails to pay the price as it becomes due the seller may re-
cover, together with any incidental damages under the
next section, the price
(a) of goods accepted or of conforming goods lost or
damaged within a commercially reasonable time after
risk of their loss has passed to the buyer; and
(b) of goods identified to the contract if the seller is
unable after reasonable effort to resell them at a reasona-
ble price or the circumstances reasonably indicate that
such effort will be unavailing.
(2) Where the seller sues for the price he must hold
for the buyer any goods which have been identified to the
contract and are still in his control except that if resale
becomes possible he may resell them at any time prior to
the collection of the judgment. The net proceeds of any
such resale must be credited to the buyer and payment of
the judgment entitles him to any goods not resold.
(3) After the buyer has wrongfully rejected or re-
voked acceptance of the goods or has failed to make a
payment due or has repudiated (Section 2-610), a seller
who is held not entitled to the price under this section
shall nevertheless be awarded damages for non-accept-
ance under the preceding section.

Sec. 2-710. Seller's Incidental Damages.—Incidental
damages to an aggrieved seller include any commercially
reasonable charges, expenses or commissions incurred in
stopping delivery, in the transportation, care and custody
of goods after the buyer's breach, in connection with re-
turn or resale of the goods or otherwise resulting from
the breach.

Sec. 2-711. Buyer's Remedies in General; Buyer's Secu-
rity Interest in Rejected Goods.—(1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (Section 2-612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid
(a) “cover” and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or
(b) recover damages for non-delivery as provided in this article (Section 2-713).

(2) Where the seller fails to deliver or repudiates the buyer may also
(a) if the goods have been identified recover them as provided in this article (Section 2-502); or
(b) in a proper case obtain specific performance or replevy the goods as provided in this article (Section 2-716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (Section 2-703).

Sec. 2-712. “Cover”; Buyer’s Procurement of Substitute Goods.—(1) After a breach within the preceding section the buyer may “cover” by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.
(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 2-715), but less expenses saved in consequence of the seller’s breach.
(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy.
Sec. 2-713. Buyer's Damages for Non-Delivery or Repudiation.—(1) Subject to the provisions of this article with respect to proof of market price (Section 2-723), the measure of damages for non-delivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this article (Section 2-715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

Sec. 2-714. Buyer's Damages for Breach in Regard to Accepted Goods.—(1) Where the buyer has accepted goods and given notification (subsection (3) of Section 2-607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

Sec. 2-715. Buyer's Incidental and Consequential Damages.—(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of
contracting had reason to know and which could not rea-
sonably be prevented by cover or otherwise; and
(b) injury to person or property proximately resulting
from any breach of warranty.

Sec. 2-716. Buyer's Right to Specific Performance or
Replevin.—(1) Specific performance may be decreed
where the goods are unique or in other proper circum-
stances.
(2) The decree for specific performance may include
such terms and conditions as to payment of the price, dam-
ages, or other relief as the court may deem just.
(3) The buyer has a right of replevin for goods iden-
tified to the contract if after reasonable effort he is unable
to effect cover for such goods or the circumstances reason-
ably indicate that such effort will be unavailing or if the
goods have been shipped under reservation and satisfac-
tion of the security interest in them has been made or ten-
dered.

Sec. 2-717. Deduction of Damages From the Price.—
The buyer on notifying the seller of his intention to do so
may deduct all or any part of the damages resulting from
any breach of the contract from any part of the price still
due under the same contract.

Sec. 2-718. Liquidation or Limitation of Damages; De-
posits.—(1) Damages for breach by either party may be
liquidated in the agreement but only at an amount which
is reasonable in the light of the anticipated or actual harm
caused by the breach, the difficulties of proof of loss, and
the inconvenience or non-feasibility of otherwise obtain-
ing an adequate remedy. A term fixing unreasonably
large liquidated damages is void as a penalty.
(2) Where the seller justifiably withholds delivery of
goods because of the buyer's breach, the buyer is entitled
to restitution of any amount by which the sum of his pay-
ments exceeds
(a) the amount to which the seller is entitled by virtue
of terms liquidating the seller's damages in accordance
with subsection (1), or
(b) in the absence of such terms, twenty per cent of
the value of the total performance for which the buyer is
obligated under the contract or $500, whichever is smaller.
(3) The buyer's right to restitution under subsection
(2) is subject to offset to the extent that the seller estab-
ishes
(a) a right to recover damages under the provisions of
this article other than subsection (1), and
(b) the amount or value of any benefits received by
the buyer directly or indirectly by reason of the contract.
(4) Where a seller has received payment in goods their
reasonable value or the proceeds of their resale shall be
treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before
reselling goods received in part performance, his resale is
subject to the conditions laid down in this article on resale
by an aggrieved seller (Section 2-706).

Sec. 2-719. Contractual Modification or Limitation of
Remedy.—(1) Subject to the provisions of subsections (2)
and (3) of this section and of the preceding section on
liquidation and limitation of damages,
(a) the agreement may provide for remedies in addi-
tion to or in substitution for those provided in this article
and may limit or alter the measure of damages recover-
able under this article, as by limiting the buyer's remedies
to return of the goods and repayment of the price or to
repair and replacement of non-conforming goods or parts;
and
(b) resort to a remedy as provided is optional unless
the remedy is expressly agreed to be exclusive, in which
case it is the sole remedy.
(2) Where circumstances cause an exclusive or limited
remedy to fail of its essential purpose, remedy may be had
as provided in this article.
(3) Consequential damages may be limited or ex-
cluded unless the limitation or exclusion is unconscion-
able. Limitation of consequential damages for injury to
the person in the case of consumer goods is prima facie
unconscionable but limitation of damages where the loss
is commercial is not.
Sec. 2-720. Effect of "Cancellation" or "Rescission" on Claims for Antecedent Breach.—Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

Sec. 2-721. Remedies for Fraud.—Remedies for material misrepresentation or fraud include all remedies available under this article for non-fraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

Sec. 2-722. Who Can Sue Third Parties for Injury to Goods.—Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern.

Sec. 2-723. Proof of Market Price: Time and Place.—

(1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (Section 2-708 or Section 2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or
places described in this article is not readily available the
price prevailing within any reasonable time before or after
the time described or at any other place which in commer-
cial judgment or under usage of trade would serve as a
reasonable substitute for the one described may be used,
making any proper allowance for the cost of transporting
the goods to or from such other place.
(3) Evidence of a relevant price prevailing at a time
or place other than the one described in this article offered
by one party is not admissible unless and until he has
given the other party such notice as the court finds suffi-
cient to prevent unfair surprise.

Sec. 2-724. Admissibility of Market Quotations.—When-
ever the prevailing price or value of any goods regularly
bought and sold in any established commodity market is
in issue, reports in official publications or trade journals
or in newspapers or periodicals of general circulation pub-
lished as the reports of such market shall be admissible in
evidence. The circumstances of the preparation of such
a report may be shown to affect its weight but not its ad-
missibility.

Sec. 2-725. Statute of Limitations in Contracts for Sale.
—(1) An action for breach of any contract for sale must
be commenced within four years after the cause of action
has accrued. By the original agreement the parties may
reduce the period of limitation to not less than one year
but may not extend it.
(2) A cause of action accrues when the breach oc-
curs, regardless of the aggrieved party’s lack of knowledge
of the breach. A breach of warranty occurs when tender
of delivery is made, except that where a warranty explic-
itly extends to future performance of the goods and dis-
covery of the breach must await the time of such perform-
ance the cause of action accrues when the breach is or
should have been discovered.
(3) Where an action commenced within the time lim-
ited by subsection (1) is so terminated as to leave avail-
able a remedy by another action for the same breach such
other action may be commenced after the expiration of
the time limited and within six months after the termina-
tion of the first action unless the termination resulted
from voluntary discontinuance or from dismissal for fail-
ure or neglect to prosecute.

(4) This section does not alter the law on tolling of the
statute of limitations nor does it apply to causes of action
which have accrued before this chapter becomes effective.

Article 3. Commercial Paper

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PART 1. SHORT TITLE, FORM AND INTERPRETATION

Sec. 3-101. Short Title.—This article shall be known and may be cited as Uniform Commercial Code—Commercial Paper.

Sec. 3-102. Definitions and Index of Definitions.—(1) In this article unless the context otherwise requires
(a) “Issue” means the first delivery of an instrument to a holder or remitter.
(b) An “order” is a direction to pay and must be more
than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.

(c) A “promise” is an undertaking to pay and must be more than an acknowledgment of an obligation.

(d) “Secondary party” means a drawer or endorser.

(e) “Instrument” means a negotiable instrument.

(2) Other definitions applying to this article and the sections in which they appear are:

“Acceptance”. Section 3-410.

“Accommodation party”. Section 3-415.

“Alteration”. Section 3-407.

“Certificate of Deposit”. Section 3-104.

“Certification”. Section 3-411.

“Check”. Section 3-104.

“Definite time”. Section 3-109.

“Dishonor”. Section 3-507.

“Draft”. Section 3-104.

“Holder in due course”. Section 3-302.

“Negotiation”. Section 3-202.

“Note”. Section 3-104.

“Notice of dishonor”. Section 3-508.

“On demand”. Section 3-108.

“Presentment”. Section 3-504.

“Protest”. Section 3-509.

“Restrictive Indorsement”. Section 3-205.

“Signature”. Section 3-401.

(3) The following definitions in other articles of this chapter apply to this article:

“Account”. Section 4-104.

“Banking Day”. Section 4-104.

“Clearing house”. Section 4-104.

“Collecting bank”. Section 4-105.

“Customer”. Section 4-104.

“Depositary Bank”. Section 4-105.

“Documentary Draft”. Section 4-104.

“Intermediary Bank”. Section 4-105.

“Item”. Section 4-104.

“Midnight deadline”. Section 4-104.

“Payor bank”. Section 4-105.
Sec. 3-103. Limitations on Scope of Article.—(1) This article does not apply to money, documents of title or investment securities.

(2) The provisions of this article are subject to the provisions of the article on Bank Deposits and Collections (Article 4) and Secured Transactions (Article 9) of this chapter.

Sec. 3-104. Form of Negotiable Instruments; “Draft”; “Check”; “Certificate of Deposit”; “Note”.—(1) Any writing to be a negotiable instrument within this article must

(a) be signed by the maker or drawer; and
(b) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this article; and
(c) be payable on demand or at a definite time; and
(d) be payable to order or to bearer.

(2) A writing which complies with the requirements of this section is

(a) a “draft” (“bill of exchange”) if it is an order;
(b) a “check” if it is a draft drawn on a bank and payable on demand;
(c) a “certificate of deposit” if it is an acknowledgment by a bank of receipt of money with an engagement to repay it;
(d) a “note” if it is a promise other than a certificate of deposit.

(3) As used in other articles of this Chapter, and as the context may require, the terms “draft”, “check”, “certificate of deposit” and “note” may refer to instruments which are not negotiable within this article as well as to instruments which are so negotiable.

Sec. 3-105. When Promise or Order Unconditional.—(1) A promise or order otherwise unconditional is not made conditional by the fact that the instrument
(a) is subject to implied or constructive conditions; or
(b) states its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or
(c) refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to prepayment or acceleration; or
(d) states that it is drawn under a letter of credit; or
(e) states that it is secured, whether by mortgage, reservation of title or otherwise; or
(f) indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or
(g) is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or
(h) is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.

(2) A promise or order is not unconditional if the instrument
(a) states that it is subject to or governed by any other agreement; or
(b) states that it is to be paid only out of a particular fund or source except as provided in this section.

Sec. 3-106. Sum Certain.—(1) The sum payable is a sum certain even though it is to be paid
(a) with stated interest or by stated installments; or
(b) with stated different rates of interest before and after default or a specified date; or
(c) with a stated discount or addition if paid before or after the date fixed for payment; or
(d) with exchange or less exchange, whether at a fixed rate or at the current rate; or
(e) with costs of collection or an attorney's fee or both
upon default.
(2) Nothing in this section shall validate any term
which is otherwise illegal.

Sec. 3-107. Money.—(1) An instrument is payable in
money if the medium of exchange in which it is payable
is money at the time the instrument is made. An instru-
ment payable in “currency” or “current funds” is payable
in money.
(2) A promise or order to pay a sum stated in a foreign
currency is for a sum certain in money and, unless a dif-
ferent medium of payment is specified in the instrument,
may be satisfied by payment of that number of dollars
which the stated foreign currency will purchase at the
buying sight rate for that currency on the day on which
the instrument is payable or, if payable on demand, on the
day of demand. If such an instrument specifies a foreign
currency as the medium of payment the instrument is pay-
able in that currency.

Sec. 3-108. Payable on Demand.—Instruments payable
on demand include those payable at sight or on presenta-
tion and those in which no time for payment is stated.

Sec. 3-109. Definite Time.—(1) An instrument is pay-
able at a definite time if by its terms it is payable
(a) on or before a stated date or at a fixed period after
a stated date; or
(b) at a fixed period after sight; or
(c) at a definite time subject to any acceleration; or
(d) at a definite time subject to extension at the op-
tion of the holder, or to extension to a further definite time
at the option of the maker or acceptor or automatically
upon or after a specified act or event.
(2) An instrument which by its terms is otherwise
payable only upon an act or event uncertain as to time of
occurrence is not payable at a definite time even though
the act or event has occurred.

Sec. 3-110. Payable to Order.—(1) An instrument is
payable to order when by its terms it is payable to the or-
der or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as "exchange" or the like and names a payee. It may be payable to the order of:

(a) the maker or drawer; or
(b) the drawee; or
(c) a payee who is not maker, drawer or drawee; or
(d) two or more payees together or in the alternative; or
(e) an estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or his successors; or
(f) an office, or an officer by his title as such in which case it is payable to the principal but the incumbent of the office or his successors may act as if he or they were the holder; or
(g) a partnership or unincorporated association, in which case it is payable to the partnership or association and may be indorsed or transferred by any person thereto authorized.

(2) An instrument not payable to order is not made so payable by such words as "payable upon return of this instrument properly indorsed".

(3) An instrument made payable both to order and to bearer is payable to order unless the bearer words are handwritten or typewritten.

Sec. 3-111. Payable to Bearer.—An instrument is payable to bearer when by its terms it is payable to
(a) bearer or the order of bearer; or
(b) a specified person or bearer; or
(c) "cash" or the order of "cash", or any other indication which does not purport to designate a specific payee.

Sec. 3-112. Terms and Omissions Not Affecting Negotiability.—(1) The negotiability of an instrument is not affected by
(a) the omission of a statement of any consideration or of the place where the instrument is drawn or payable; or
(b) a statement that collateral has been given to se-
cure obligations either on the instrument or otherwise of an obligor on the instrument or that in the case of default on those obligations the holder may realize on or dispose of the collateral; or

(c) a promise or power to maintain or protect collateral or to give additional collateral; or

(d) a term authorizing a confession of judgment on the instrument if it is not paid when due; or

(e) a term purporting to waive the benefit of any law intended for the advantage or protection of any obligor; or

(f) a term in a draft providing that the payee by indorsing or cashing it acknowledges full satisfaction of an obligation of the drawer; or

(g) a statement in a draft drawn in a set of parts (Section 3-801) to the effect that the order is effective only if no other part has been honored.

(2) Nothing in this section shall validate any term which is otherwise illegal.

Sec. 3-113. Seal.—An instrument otherwise negotiable is within this article even though it is under a seal.

Sec. 3-114. Date, Antedating, Postdating.—(1) The negotiability of an instrument is not affected by the fact that it is undated, antedated or postdated.

(2) Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.

(3) Where the instrument or any signature thereon is dated, the date is presumed to be correct.

Sec. 3-115. Incomplete Instruments.—(1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.

(2) If the completion is unauthorized the rules as to material alteration apply (Section 3-407), even though the paper was not delivered by the maker or drawer; but the
Sec. 3-116. Instruments Payable to Two or More Persons.—An instrument payable to the order of two or more persons
   (a) if in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it;
   (b) if not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them.

Sec. 3-117. Instruments Payable With Words of Description.—An instrument made payable to a named person with the addition of words describing him
   (a) as agent or officer of a specified person is payable to his principal but the agent or officer may act as if he were the holder;
   (b) as any other fiduciary for a specified person or purpose is payable to the payee and may be negotiated, discharged or enforced by him;
   (c) in any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties.

Sec. 3-118. Ambiguous Terms and Rules of Construction.—The following rules apply to every instrument:
   (a) Where there is doubt whether the instrument is a draft or a note the holder may treat it as either. A draft drawn on the drawer is effective as a note.
   (b) Handwritten terms control typewritten and printed terms, and typewritten control printed.
   (c) Words control figures except that if the words are ambiguous figures control.
   (d) Unless otherwise specified a provision for interest means interest at the judgment rate at the place of payment from the date of the instrument, or if it is undated from the date of issue.
   (e) Unless the instrument otherwise specifies two or more persons who sign as maker, acceptor or drawer or
indorser and as a part of the same transaction are jointly and severally liable even though the instrument contains such words as "I promise to pay".

(f) Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period. A consent to extension, expressed in the instrument, is binding on secondary parties and accommodation makers. A holder may not exercise his option to extend an instrument over the objection of a maker or acceptor or other party who in accordance with Section 3-604 tenders full payment when the instrument is due.

Sec. 3-119. Other Writings Affecting Instrument.—(1) As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement executed as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.

(2) A separate agreement does not affect the negotiability of an instrument.

Sec. 3-120. Instruments "Payable Through" Bank.—An instrument which states that it is "payable through" a bank or the like designates that bank as a collecting bank to make presentment but does not of itself authorize the bank to pay the instrument.

Sec. 3-121. Instruments Payable at Bank.—A note or acceptance which states that it is payable at a bank is not of itself an order or authorization to the bank to pay it.

Sec. 3-122. Accrual of Cause of Action.—(1) A cause of action against a maker or an acceptor accrues

(a) in the case of a time instrument on the day after maturity;

(b) in the case of a demand instrument upon its date or, if no date is stated, on the date of issue.

(2) A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.
(3) A cause of action against a drawer of a draft or an indorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

(4) Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment

(a) in the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;

(b) in all other cases from the date of accrual of the cause of action.

PART 2. TRANSFER AND NEGOTIATION

Sec. 3-201. Transfer: Right to Indorsement.—(1) Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course.

(2) A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.

(3) Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified indorsement of the transferor. Negotiation takes effect only when the indorsement is made and until that time there is no presumption that the transferee is the owner.

Sec. 3-202. Negotiation.—(1) Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery.

(2) An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

(3) An indorsement is effective for negotiation only when it conveys the entire instrument or any un-
paid residue. If it purports to be of less it operates only
as a partial assignment.

(4) Words of assignment, condition, waiver, guar-
antity, limitation or disclaimer of liability and the like ac-
companying an indorsement do not affect its character
as an indorsement.

Sec. 3-203. Wrong or Misspelled Name.—Where an in-
strument is made payable to a person under a misspelled
name or one other than his own he may indorse in that
name or his own or both; but signature in both names
may be required by a person paying or giving value
for the instrument.

Sec. 3-204. Special Indorsement; Blank Indorsement.—
(1) A special indorsement specifies the person to whom
or to whose order it makes the instrument payable.
Any instrument specially indorsed becomes payable to
the order of the special indorsee and may be further
negotiated only by his indorsement.

(2) An indorsement in blank specifies no particular
indorsee and may consist of a mere signature. An in-
strument payable to order and indorsed in blank be-
comes payable to bearer and may be negotiated by
delivery alone until specially indorsed.

(3) The holder may convert a blank indorsement
into a special indorsement by writing over the signa-
ture of the indorser in blank any contract consistent
with the character of the indorsement.

Sec. 3-205. Restrictive Indorsements.—An indorsement
is restrictive which either

(a) is conditional; or

(b) purports to prohibit further transfer of the in-
strument; or

(c) includes the words “for collection”, “for de-
posit”, “pay any bank”, or like terms signifying a pur-
pose of deposit or collection; or

(d) otherwise states that it is for the benefit or use
of the indorser or of another person.

Sec. 3-206. Effect of Restrictive Indorsement.—(1) No
restrictive indorsement prevents further transfer or negotiation of the instrument.

(2) An intermediary bank, or a payor bank which is not the depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor or the person presenting for payment.

(3) Except for an intermediary bank, any transferee under an indorsement which is conditional or includes the words "for collection", "for deposit", "pay any bank", or like terms (subparagraphs (a) and (c) of Section 3-205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such transferee is a holder in due course if he otherwise complies with the requirements of Section 3-302 on what constitutes a holder in due course.

(4) The first taker under an indorsement for the benefit of the indorser or another person (subparagraph (d) of Section 3-205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such taker is a holder in due course if he otherwise complies with the requirements of Section 3-302 on what constitutes a holder in due course. A later holder for value is neither given notice nor otherwise affected by such restrictive indorsement unless he has knowledge that a fiduciary or other person has negotiated the instrument in any transaction for his own benefit or otherwise in breach of duty (subsection (2) of Section 3-304).

Sec. 3-207. Negotiation Effective Although It May Be Rescinded.—(1) Negotiation is effective to transfer the instrument although the negotiation is

(a) made by an infant, a corporation exceeding its powers, or any other person without capacity; or

(b) obtained by fraud, duress or mistake of any kind;
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8  (c) part of an illegal transaction; or
9  (d) made in breach of duty.
10  (2) Except as against a subsequent holder in due course such negotiation is in an appropriate case subject to rescission, the declaration of a constructive trust or any other remedy permitted by law.

Sec. 3-208. Reacquisition.—Where an instrument is returned to or reacquired by a prior party he may cancel any indorsement which is not necessary to his title and reissue or further negotiate the instrument, but any intervening party is discharged as against the reacquiring party and subsequent holders not in due course and if his indorsement has been cancelled is discharged as against subsequent holders in due course as well.

PART 3. RIGHTS OF A HOLDER

Sec. 3-301. Rights of a Holder.—The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in Section 3-603 on payment or satisfaction, discharge it or enforce payment in his own name.

Sec. 3-302. Holder in Due Course.—(1) A holder in due course is a holder who takes the instrument
2  (a) for value; and
3  (b) in good faith; and
4  (c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.
8  (2) A payee may be a holder in due course.
9  (3) A holder does not become a holder in due course of an instrument:
11  (a) by purchase of it at judicial sale or by taking it under legal process; or
13  (b) by acquiring it in taking over an estate; or
14  (c) by purchasing it as part of a bulk transaction not in regular course of business of the transferor.
16  (4) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased.
Sec. 3-303. Taking for Value.—A holder takes the instrument for value

(a) to the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process; or

(b) when he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or

(c) when he gives a negotiable instrument for it or makes an irrevocable commitment to a third person.

Sec. 3-304. Notice to Purchaser.—(1) The purchaser has notice of a claim or defense if

(a) the instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or

(b) the purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.

(2) The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.

(3) The purchaser has notice that an instrument is overdue if he has reason to know

(a) that any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or

(b) that acceleration of the instrument has been made;

or

(c) that he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and territories of the United States and the District of Columbia is presumed to be thirty days.
(4) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim
(a) that the instrument is antedated or postdated;
(b) that it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;
(c) that any party has signed for accommodation;
(d) that an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;
(e) that any person negotiating the instrument is or was a fiduciary;
(f) that there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.
(5) The filing or recording of a document does not of itself constitute notice within the provisions of this article to a person who would otherwise be a holder in due course.
(6) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it.

Sec. 3-305. Rights of a Holder in Due Course.—To the extent that a holder is a holder in due course he takes the instrument free from
(1) all claims to it on the part of any person; and
(2) all defenses of any party to the instrument with whom the holder has not dealt except
(a) infancy, to the extent that it is a defense to a simple contract; and
(b) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and
(c) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and
(d) discharge in insolvency proceedings; and
Sec. 3-306. Rights of One Not Holder in Due Course.—

Unless he has the rights of a holder in due course any person takes the instrument subject to

(a) all valid claims to it on the part of any person; and

(b) all defenses of any party which would be available in an action on a simple contract; and

(c) the defenses of want or failure of consideration, non-performance of any condition precedent, non-delivery, or delivery for a special purpose (Section 3-408); and

(d) the defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive indorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party.

Sec. 3-307. Burden of Establishing Signatures, Defenses and Due Course.—(1) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue

(a) the burden of establishing it is on the party claiming under the signature; but

(b) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

(2) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

(3) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course.

PART 4. LIABILITY OF PARTIES

Sec. 3-401. Signature.—(1) No person is liable on an instrument unless his signature appears thereon.
(2) A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature.

Sec. 3-402. Signature in Ambiguous Capacity.—Unless the instrument clearly indicates that a signature is made in some other capacity it is an indorsement.

Sec. 3-403. Signature by Authorized Representative.—(1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

   (2) An authorized representative who signs his own name to an instrument

   (a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

   (b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

   (3) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.

Sec. 3-404. Unauthorized Signatures.—(1) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

   (2) Any unauthorized signature may be ratified for all purposes of this article. Such ratification does not of itself affect any rights of the person ratifying against the actual signer.

Sec. 3-405. Impostors; Signature in Name of Payee.—
(1) An indorsement by any person in the name of a named payee is effective if
(a) an impostor by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or
(b) a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or
(c) an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.

(2) Nothing in this section shall affect the criminal or civil liability of the person so indorsing.

Sec. 3-406. Negligence Contributing to Alteration or Unauthorized Signature.—Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business.

Sec. 3-407. Alteration.—(1) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in
(a) the number or relations of the parties; or
(b) an incomplete instrument, by completing it otherwise than as authorized; or
(c) the writing as signed, by adding to it or by removing any part of it.
(2) As against any person other than a subsequent holder in due course
(a) alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense;
(b) no other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

(3) A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed.

Sec. 3-408. Consideration.—Want or failure of consideration is a defense as against any person not having the rights of a holder in due course (Section 3-305), except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind. Nothing in this section shall be taken to displace any statute outside this Chapter under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense pro tanto whether or not the failure is in an ascertained or liquidated amount.

Sec. 3-409. Draft Not an Assignment.—(1) A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.

(2) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance.

Sec. 3-410. Definition and Operation of Acceptance.—(1) Acceptance is the drawee’s signed engagement to honor the draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.

(2) A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.

(3) Where the draft is payable at a fixed period after
sight and the acceptor fails to date his acceptance the
holder may complete it by supplying a date in good faith.

Sec. 3-411. Certification of a Check.—(1) Certification
of a check is acceptance. Where a holder procures cer-
tification the drawer and all prior indorsers are dis-
charged.

(2) Unless otherwise agreed a bank has no obliga-
tion to certify a check.

(3) A bank may certify a check before returning it
for lack of proper indorsement. If it does so the drawer
is discharged.

Sec. 3-412. Acceptance Varying Draft.—(1) Where the
drawee's proffered acceptance in any manner varies the
draft as presented the holder may refuse the acceptance
and treat the draft as dishonored in which case the
drawee is entitled to have his acceptance cancelled.

(2) The terms of the draft are not varied by an ac-
cception to pay at any particular bank or place in the
United States, unless the acceptance states that the
draft is to be paid only at such bank or place.

(3) Where the holder assents to an acceptance vary-
ing the terms of the draft each drawer and indorser who
does not affirmatively assent is discharged.

Sec. 3-413. Contract of Maker, Drawer and Acceptor.—
(1) The maker or acceptor engages that he will pay the
instrument according to its tenor at the time of his en-
gagement or as completed pursuant to Section 3-115 on
incomplete instruments.

(2) The drawer engages that upon dishonor of the
draft and any necessary notice of dishonor or protest he
will pay the amount of the draft to the holder or to any
indorser who takes it up. The drawer may disclaim this
liability by drawing without recourse.

(3) By making, drawing or accepting the party ad-
mits as against all subsequent parties including the
drawee the existence of the payee and his then capacity
to indorse.

Sec. 3-414. Contract of Indorser; Order of Liability.—
2 (1) Unless the indorsement otherwise specifies (as by such words as “without recourse”) every indorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his indorsement to the holder or to any subsequent indorser who takes it up, even though the indorser who takes it up was not obligated to do so.

2 (2) Unless they otherwise agree indorsers are liable to one another in the order in which they indorse, which is presumed to be the order in which their signatures appear on the instrument.

Sec. 3-415. Contract of Accommodation Party.—(1) An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.

2 (2) When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

2 (3) As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.

2 (4) An indorsement which shows that it is not in the chain of title is notice of its accommodation character.

2 (5) An accommodation party is not liable to the party accommodated, and if he pays the instrument has a right of recourse on the instrument against such party.

Sec. 3-416. Contract of Guarantor.—(1) “Payment guaranteed” or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party.

2 (2) “Collection guaranteed” or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it
9 according to its tenor, but only after the holder has re-
10 duced his claim against the maker or acceptor to judg-
11 ment and execution has been returned unsatisfied, or 
12 after the maker or acceptor has become insolvent or it 
13 is otherwise apparent that it is useless to proceed 
14 against him.

15 (3) Words of guaranty which do not otherwise spec-
16 ify guarantee payment.

17 (4) No words of guaranty added to the signature of 
18 a sole maker or acceptor affect his liability on the in-
19 strument. Such words added to the signature of one of 
20 two or more makers or acceptors create a presumption 
21 that the signature is for the accommodation of the others.

22 (5) When words of guaranty are used presentment, 
23 notice of dishonor and protest are not necessary to charge 
24 the user.

25 (6) Any guaranty written on the instrument is en-
26 forceable notwithstanding any statute of frauds.

Sec. 3-417. Warranties on Presentment and Transfer.—
2 (1) Any person who obtains payment or acceptance 
3 and any prior transferor warrants to a person who in 
4 good faith pays or accepts that 
5 (a) he has a good title to the instrument or is auth-
6 orized to obtain payment or acceptance on behalf of one 
7 who has a good title; and 
8 (b) he has no knowledge that the signature of the 
9 maker or drawer is unauthorized, except that this war-
10 ranty is not given by a holder in due course acting in 
11 good faith 
12 (i) to a maker with respect to the maker's own sig-
13 nature; or 
14 (ii) to a drawer with respect to the drawer's own 
15 signature, whether or not the drawer is also the drawee; 
16 or 
17 (iii) to an acceptor of a draft if the holder in due 
18 course took the draft after the acceptance or obtained 
19 the acceptance without knowledge that the drawer's sig-
20 nature was unauthorized; and 
21 (c) the instrument has not been materially altered,
except that this warranty is not given by a holder in due course acting in good faith

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) to the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided “payable as originally drawn” or equivalent terms; or

(iv) to the acceptor of a draft with respect to an alteration made after the acceptance.

(2) Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by indorsement to any subsequent holder who takes the instrument in good faith that

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) all signatures are genuine or authorized; and

(c) the instrument has not been materially altered; and

(d) no defense of any party is good against him; and

(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

(3) By transferring “without recourse” the transferor limits the obligation stated in subsection (2) (d) to a warranty that he has no knowledge of such a defense.

(4) A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority.

Sec. 3-418. Finality of Payment or Acceptance.—Except for recovery of bank payments as provided in the article on Bank Deposits and Collections (Article 4) and except for liability for breach of warranty on present-
Sec. 3-419. Conversion of Instrument; Innocent Representative.—(1) An instrument is converted when
(a) a drawee to whom it is delivered for acceptance
refuses to return it on demand; or
(b) any person to whom it is delivered for payment
refuses on demand either to pay or to return it; or
(c) it is paid on a forged indorsement.
(2) In an action against a drawee under subsection
(1) the measure of the drawee's liability is the face
amount of the instrument. In any other action under
subsection (1) the measure of liability is presumed to be
the face amount of the instrument.
(3) Subject to the provisions of this chapter concerning
restrictive indorsements a representative, including
a depositary or collecting bank, who has in good faith
and in accordance with the reasonable commercial
standards applicable to the business of such representa-
tive dealt with an instrument or its proceeds on behalf
of one who was not the true owner is not liable in
conversion or otherwise to the true owner beyond the
amount of any proceeds remaining in his hands.
(4) An intermediary bank or payor bank which is
not a depositary bank is not liable in conversion solely
by reason of the fact that proceeds of an item in-
dorsed restrictively (Sections 3-205 and 3-206) are not
paid or applied consistently with the restrictive indorse-
ment of an indorser other than its immediate transferor.

PART 5. PRESENTMENT, NOTICE OF DISHONOR AND
PROTEST

Sec. 3-501. When Presentment, Notice of Dishonor, and
Protest Necessary or Permissible.—(1) Unless excused
(Section 3-511) presentment is necessary to charge sec-
ondary parties as follows:
(a) presentment for acceptance is necessary to
charge the drawer and indorsers of a draft where the
draft so provides, or is payable elsewhere than at the
residence or place of business of the drawee, or its date
of payment depends upon such presentment. The holder
may at his option present for acceptance any other
draft payable at a stated date;
(b) presentment for payment is necessary to charge
any indorser;
(c) in the case of any drawer, the acceptor of a
draft payable at a bank or the maker of a note payable
at a bank, presentment for payment is necessary, but
failure to make presentment discharges such drawer,
acceptor or maker only as stated in Section 3-502 (1) (b).
(2) Unless excused (Section 3-511)
(a) notice of any dishonor is necessary to charge
any indorser;
(b) in the case of any drawer, the acceptor of a draft
payable at a bank or the maker of a note payable at a
bank, notice of any dishonor is necessary, but failure
to give such notice discharges such drawer, acceptor or
maker only as stated in Section 3-502 (1) (b).
(3) Unless excused (Section 3-511) protest of any
dishonor is necessary to charge the drawer and indor-
sers of any draft which on its face appears to be drawn
or payable outside of the states and territories of the
United States and the District of Columbia. The holder
may at his option make protest of any dishonor of any
other instrument and in the case of a foreign draft may
on insolvency of the acceptor before maturity make pro-
test for better security.
(4) Notwithstanding any provision of this section,
neither presentment nor notice of dishonor nor protest
is necessary to charge an indorser who has indorsed an
instrument after maturity.

Sec. 3-502. Unexcused Delay; Discharge.—(1) Where
without excuse any necessary presentment or notice of
dishonor is delayed beyond the time when it is due
(a) any indorser is discharged; and
(b) any drawer or the acceptor of a draft payable
at a bank or the maker of a note payable at a bank who
because the drawee or payor bank becomes insolvent
during the delay is deprived of funds maintained with
the drawee or payor bank to cover the instrument may
discharge his liability by written assignment to the
holder of his rights against the drawee or payor bank in
respect of such funds, but such drawer, acceptor or
maker is not otherwise discharged.

(2) Where without excuse a necessary protest is
delayed beyond the time when it is due any drawer or
indorser is discharged.

Sec. 3-503. Time of Presentment.—(1) Unless a differ-
et time is expressed in the instrument the time for any
presentation is determined as follows:

(a) where an instrument is payable at or a fixed period
after a stated date any presentment for acceptance must
be made on or before the date it is payable;

(b) where an instrument is payable after sight it must
either be presented for acceptance or negotiated within
a reasonable time after date or issue whichever is later;

(c) where an instrument shows the date on which it
is payable presentment for payment is due on that date;

(d) where an instrument is accelerated presentment
for payment is due within a reasonable time after the ac-
celeration;

(e) with respect to the liability of any secondary
party presentment for acceptance or payment of any other
instrument is due within a reasonable time after such
party becomes liable thereon.

(2) A reasonable time for presentment is determined
by the nature of the instrument, any usage of banking or
trade and the facts of the particular case. In the case of
an uncertified check which is drawn and payable within
the United States and which is not a draft drawn by a
bank the following are presumed to be reasonable periods
within which to present for payment or to initiate bank
collection:

(a) with respect to the liability of the drawer, thirty
days after date or issue whichever is later; and

(b) with respect to the liability of an indorser, seven
days after his indorsement.
(3) Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties.

(4) Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day.

Sec. 3-504. How Presentment Made.—(1) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

(2) Presentment may be made
   (a) by mail, in which event the time of presentment is determined by the time of receipt of the mail; or
   (b) through a clearing house; or
   (c) at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.

(3) It may be made
   (a) to any one of two or more makers, acceptors, drawees or other payors; or
   (b) to any person who has authority to make or refuse the acceptance or payment.

(4) A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

(5) In the cases described in Section 4-210 presentment may be made in the manner and with the result stated in that section.

Sec. 3-505. Rights of Party to Whom Presentment Is Made.—(1) The party to whom presentment is made may without dishonor require
   (a) exhibition of the instrument; and
   (b) reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and
(c) that the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and

(d) a signed receipt on the instrument for any partial or full payment and its surrender upon full payment.

(2) Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the time for acceptance or payment runs from the time of compliance.

Sec. 3-506. Time Allowed for Acceptance or Payment.—

(1) Acceptance may be deferred without dishonor until the close of the next business day following presentment. The holder may also in a good faith effort to obtain acceptance and without either dishonor of the instrument or discharge of secondary parties allow postponement of acceptance for an additional business day.

(2) Except as a longer time is allowed in the case of documentary drafts drawn under a letter of credit, and unless an earlier time is agreed to by the party to pay, payment of an instrument may be deferred without dishonor pending reasonable examination to determine whether it is properly payable, but payment must be made in any event before the close of business on the day of presentment.

Sec. 3-507. Dishonor; Holder's Right of Recourse; Term Allowing Re-Presentment.—(1) An instrument is dishonored when

(a) a necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by the midnight deadline (Section 4-301); or

(b) presentment is excused and the instrument is not duly accepted or paid.

(2) Subject to any necessary notice of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and indorsers.

(3) Return of an instrument for lack of proper indorsement is not dishonor.
A term in a draft or an indorsement thereof allowing a stated time for re-presentation in the event of any dishonor of the draft by nonacceptance if a time draft or by nonpayment if a sight draft gives the holder as against any secondary party bound by the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time.

Sec. 3-508. Notice of Dishonor.—(1) Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.

(2) Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

(3) Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

(4) Written notice is given when sent although it is not received.

(5) Notice to one partner is notice to each although the firm has been dissolved.

(6) When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.

(7) When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.
(8) Notice operates for the benefit of all parties who have rights on the instrument against the party notified.

Sec. 3-509. Protest; Noting for Protest.—(1) A protest is a certificate of dishonor made under the hand and seal of a United States consul or vice consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person.

(2) The protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

(3) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(4) Subject to subsection (5) any necessary protest is due by the time that notice of dishonor is due.

(5) If, before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting.

Sec. 3-510. Evidence of Dishonor and Notice of Dishonor.—The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

(a) a document regular in form as provided in the preceding section which purports to be a protest;

(b) the purported stamp or writing of the drawee, payor bank or presenting bank on the instrument or accompanying it stating that acceptance or payment has been refused for reasons consistent with dishonor;

(c) any book or record of the drawee, payor bank, or any collecting bank kept in the usual course of business which shows dishonor, even though there is no evidence of who made the entry.

Sec. 3-511. Waived or Excused Presentment, Protest or Notice of Dishonor or Delay Therein.—(1) Delay in presentment, protest or notice of dishonor is excused when the party is without notice that it is due or when the delay is caused by circumstances beyond his control and he
exercises reasonable diligence after the cause of the delay ceases to operate.

(2) Presentment or notice or protest as the case may be is entirely excused when

(a) the party to be charged has waived it expressly or by implication either before or after it is due; or

(b) such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or

(c) by reasonable diligence the presentment or protest cannot be made or the notice given.

(3) Presentment is also entirely excused when

(a) the maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or

(b) acceptance or payment is refused but not for want of proper presentment.

(4) Where a draft has been dishonored by nonacceptance a later presentment for payment and any notice of dishonor and protest for nonpayment are excused unless in the meantime the instrument has been accepted.

(5) A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

(6) Where a waiver of presentment or notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an indorser it binds him only.

PART 6. DISCHARGE

Sec. 3-601. Discharge of Parties.—(1) The extent of the discharge of any party from liability on an instrument is governed by the sections on

(a) payment or satisfaction (Section 3-603); or

(b) tender of payment (Section 3-604); or

(c) cancellation or renunciation (Section 3-605); or

(d) impairment of right of recourse or of collateral (Section 3-606); or
(e) reacquisition of the instrument by a prior party (Section 3-208); or
(f) fraudulent and material alteration (Section 3-407); or
(g) certification of a check (Section 3-411); or
(h) acceptance varying a draft (Section 3-412); or
(i) unexcused delay in presentment or notice of dishonor or protest (Section 3-502).

(2) Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.

(3) The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument
(a) reacquires the instrument in his own right; or
(b) is discharged under any provision of this article, except as otherwise provided with respect to discharge for impairment of recourse or of collateral (Section 3-606).

Sec. 3-602. Effect of Discharge Against Holder in Due Course.—No discharge of any party provided by this article is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument.

Sec. 3-603. Payment or Satisfaction.—(1) The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability
(a) of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who
(unless having the rights of a holder in due course) holds through one who so acquired it; or
(b) of a party (other than an intermediary bank or a payor bank which is not a depositary bank) who pays or satisfies the holder of an instrument which has been restrictively indorsed in a manner not consistent with the terms of such restrictive indorsement.

(2) Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (Section 3-201).

Sec. 3-604. Tender of Payment.—(1) Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs and attorney's fees.

(2) The holder's refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.

(3) Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender.

Sec. 3-605. Cancellation and Renunciation.—(1) The holder of an instrument may even without consideration discharge any party
(a) in any manner apparent on the face of the instrument or the indorsement, as by intentionally cancelling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature; or
(b) by renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged.

(2) Neither cancellation nor renunciation without surrender of the instrument affects the title thereto.

Sec. 3-606. Impairment of Recourse or of Collateral.—(1) The holder discharges any party to the instru-
ment to the extent that without such party's consent
the holder
(a) without express reservation of rights releases
or agrees not to sue any person against whom the party
has to the knowledge of the holder a right of recourse
or agrees to suspend the right to enforce against such
person the instrument or collateral or otherwise dis-
charges such person, except that failure or delay in
effecting any required presentment, protest or notice
of dishonor with respect to any such person does not
discharge any party as to whom presentment, protest
or notice of dishonor is effective or unnecessary; or
(b) unjustifiably impairs any collateral for the in-
strument given by or on behalf of the party or any per-
son against whom he has a right of recourse.
(2) By express reservation of rights against a party
with a right of recourse the holder preserves
(a) all his rights against such party as of the time
when the instrument was originally due; and
(b) the right of the party to pay the instrument as
of that time; and
(c) all rights of such party to recourse against
others.

PART 7. ADVICE OF INTERNATIONAL SIGHT DRAFT

Sec. 3-701. Letter of Advice of International Sight
Draft.—(1) A “letter of advice” is a drawer’s communica-
tion to the drawee that a described draft has been
drawn.
(2) Unless otherwise agreed when a bank receives
from another bank a letter of advice of an international
sight draft the drawee bank may immediately debit the
drawer’s account and stop the running of interest pro
 tanto. Such a debit and any resulting credit to any
account covering outstanding drafts leaves in the drawer
full power to stop payment or otherwise dispose of the
amount and creates no trust or interest in favor of the
holder.
(3) Unless otherwise agreed and except where a
draft is drawn under a credit issued by the drawee, the
16 drawee of an international sight draft owes the drawer no duty to pay an unadvised draft but if it does so and the draft is genuine, may appropriately debit the drawee's account.

PART 8. MISCELLANEOUS

Sec. 3-801. Drafts in a Set.—(1) Where a draft is drawn in a set of parts, each of which is numbered and expressed to be an order only if no other part has been honored, the whole of the parts constitutes one draft but a taker of any part may become a holder in due course of the draft.

(2) Any person who negotiates, indorses or accepts a single part of a draft drawn in a set thereby becomes liable to any holder in due course of that part as if it were the whole set, but as between different holders in due course to whom different parts have been negotiated the holder whose title first accrues has all rights to the draft and its proceeds.

(3) As against the drawee the first presented part of a draft drawn in a set is the part entitled to payment, or if a time draft to acceptance and payment. Acceptance of any subsequently presented part renders the drawee liable thereon under subsection (2). With respect both to a holder and to the drawer payment of a subsequently presented part of a draft payable at sight has the same effect as payment of a check notwithstanding an effective stop order (Section 4-407).

(4) Except as otherwise provided in this section, where any part of a draft in a set is discharged by payment or otherwise the whole draft is discharged.

Sec. 3-802. Effect of Instrument on Obligation for Which It Is Given.—(1) Unless otherwise agreed where an instrument is taken for an underlying obligation

(a) the obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor; and

(b) in any other case the obligation is suspended pro tanto until the instrument is due or if it is payable on de-
mand until its presentment. If the instrument is dishonored action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation.

(2) The taking in good faith of a check which is not postdated does not of itself so extend the time on the original obligation as to discharge a surety.

Sec. 3-803. Notice to Third Party.—Where a defendant is sued for breach of an obligation for which a third person is answerable over under this article he may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over to him under this article. If the notice states that the person notified may come in and defend and that if the person notified does not do so he will in any action against him by the person giving the notice be bound by any determination of fact common to the two litigations, then unless after seasonable receipt of the notice the person notified does come in and defend he is so bound.

Sec. 3-804. Lost, Destroyed or Stolen Instruments.—The owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms. The court may require security indemnifying the defendant against loss by reason of further claims on the instrument.

Sec. 3-805. Instruments Not Payable to Order or to Bearer.—This article applies to any instrument whose terms do not preclude transfer and which is otherwise negotiable within this article but which is not payable to order or to bearer, except that there can be no holder in due course of such an instrument.

Article 4. Bank Deposits and Collections

PART I. GENERAL PROVISIONS AND DEFINITIONS

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PART 5. COLLECTION OF DOCUMENTARY DRAFTS
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4-504. Privilege of presenting bank to deal with goods; security interest for expenses.
PART 1. GENERAL PROVISIONS AND DEFINITIONS

Section 4-101. Short Title.—This article shall be known and may be cited as Uniform Commercial Code—Bank Deposits and Collections.

Sec. 4-102. Applicability.—(1) To the extent that items within this article are also within the scope of Articles 3 and 8, they are subject to the provisions of those articles. In the event of conflict the provisions of this article govern those of Article 3 but the provisions of Article 8 govern those of this article.

(2) The liability of a bank for action or non-action with respect to any item handled by it for purposes of presentation, payment or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

Sec. 4-103. Variation by Agreement; Measure of Damages; Certain Action Constituting Ordinary Care.—(1) The effect of the provisions of this article may be varied by agreement except that no agreement can disclaim a bank’s responsibility for its own lack of good faith or failure to exercise ordinary care or can limit the measure of damages for such lack or failure; but the parties may by agreement determine the standards by which such responsibility is to be measured if such standards are not manifestly unreasonable.

(2) Federal Reserve regulations and operating letters, clearing house rules, and the like, have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.

(3) Action or non-action approved by this article or pursuant to Federal Reserve regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing house rules and the like or with a general banking usage not disapproved by this article, prima facie constitutes the exercise of ordinary care.

(4) The specification or approval of certain procedures
by this article does not constitute disapproval of other
procedures which may be reasonable under the circum-
stances.

(5) The measure of damages for failure to exercise
ordinary care in handling an item is the amount of the
item reduced by an amount which could not have been
realized by the use of ordinary care, and where there is
bad faith it includes other damages, if any, suffered by
the party as a proximate consequence.

Sec. 4-104. Definitions and Index of Definitions.—(1)

In this article unless the context otherwise requires
(a) “Account” means any account with a bank and
includes a checking, time, interest or savings account;
b) “Afternoon” means the period of a day between
noon and midnight;
(c) “Banking day” means that part of any day on
which a bank is open to the public for carrying on sub-
stantially all of its banking functions;
d) “Clearing house” means any association of banks
or other payors regularly clearing items;
e) “Customer” means any person having an account
with a bank or for whom a bank has agreed to collect
items and includes a bank carrying an account with an-
other bank;
f) “Documentary draft” means any negotiable or non-
negotiable draft with accompanying documents, securi-
ties or other papers to be delivered against honor of the
draft;
g) “Item” means any instrument for the payment of
money even though it is not negotiable but does not in-
clude money;
h) “Midnight deadline” with respect to a bank is
midnight on its next banking day following the banking
day on which it receives the relevant item or notice or
from which the time for taking action commences to run,
whichever is later;
i) “Properly payable” includes the availability of
funds for payment at the time of decision to pay or dis-
honor;
“Settle” means to pay in cash, by clearing house settlement, in a charge or credit or by remittance, otherwise as instructed. A settlement may be either provisional or final;

“Suspends payments” with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this article and the sections in which they appear are:

- “Collecting bank” Section 4-105.
- “Depositary bank” Section 4-105.
- “Intermediary bank” Section 4-105.
- “Payor bank” Section 4-105.
- “Presenting bank” Section 4-105.
- “Remitting bank” Section 4-105.

(3) The following definitions in other articles of this chapter apply to this article:

- “Acceptance” Section 3-410.
- “Certificate of deposit” Section 3-104.
- “Certification” Section 3-411.
- “Check” Section 3-104.
- “Draft” Section 3-104.
- “Holder in due course” Section 3-302.
- “Notice of dishonor” Section 3-508.
- “Presentment” Section 3-504.
- “Protest” Section 3-509.
- “Secondary party” Section 3-102.

(4) In addition Article 1 of this chapter contains general definitions and principles of construction and interpretation applicable throughout this article.

Sec. 4-105. “Depositary Bank”; “Intermediary Bank”; “Collecting Bank”; “Payor Bank”; “Presenting Bank”; “Remitting Bank”.—In this article unless the context otherwise requires:

(a) “Depositary bank” means the first bank to which an item is transferred for collection even though it is also the payor bank;
(b) "Payor bank" means a bank by which an item is payable as drawn or accepted;

(c) "Intermediary bank" means any bank to which an item is transferred in course of collection except the depositary or payor bank;

(d) "Collecting bank" means any bank handling the item for collection except the payor bank;

(e) "Presenting bank" means any bank presenting an item except a payor bank;

(f) "Remitting bank" means any payor or intermediary bank remitting for an item.

Sec. 4-106. Separate Office of a Bank.—A branch or separate office of a bank maintaining its own deposit ledgers is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under this article and under Article 3.

Sec. 4-107. Time of Receipt of Items.—(1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an after-noon hour of two P.M. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(2) Any item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

Sec. 4-108. Delays.—(1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment may, in the case of specific items and with or without the approval of any person involved, waive, modify or extend time limits imposed or permitted by this chapter for a period not in excess of an additional banking day without discharge of secondary parties and without liability to its transferor or any prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this chapter or by instruction is excused if caused by interruption of com-
munication facilities, suspension of payments by an-
other bank, war, emergency conditions or other circum-
stances beyond the control of the bank provided it ex-
ercises such diligence as the circumstances require.

Sec. 4-109. Process of Posting.—The “process of post-
ing” means the usual procedure followed by a payor
bank in determining to pay an item and in recording
the payment including one or more of the following or
other steps as determined by the bank:
(a) verification of any signature;
(b) ascertaining that sufficient funds are available;
(c) affixing a “paid” or other stamp;
(d) entering a charge or entry to a customer’s ac-
count;
(e) correcting or reversing an entry or erroneous
action with respect to the item.

PART 2. COLLECTION OF ITEMS: DEPOSITARY AND
COLLECTING BANKS

Sec. 4-201. Presumption and Duration of Agency Status
of Collecting Banks and Provisional Status of Credits;
Applicability of Article; Item Indorsed “Pay Any Bank”.
—(1) Unless a contrary intent clearly appears and prior
to the time that a settlement given by a collecting bank
for an item is or becomes final (subsection (3) of Sec-
tion 4-211 and Sections 4-212 and 4-213) the bank is an
agent or sub-agent of the owner of the item and any
settlement given for the item is provisional. This pro-
vision applies regardless of the form of indorsement or
lack of indorsement and even though credit given for
the item is subject to immediate withdrawal as of right
or is in fact withdrawn; but the continuance of owner-
ship of an item by its owner and any rights of the own-
er to proceeds of the item are subject to rights of a col-
lecting bank such as those resulting from outstanding
advances on the item and valid rights of setoff. When
an item is handled by banks for purposes of present-
ment, payment and collection, the relevant provisions
of this article apply even though action of parties clearly
establishes that a particular bank has purchased the item and is the owner of it.

(2) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder

(a) until the item has been returned to the customer initiating collection; or

(b) until the item has been specially indorsed by a bank to a person who is not a bank.

Sec. 4-202. Responsibility for Collection; When Action Seasonable.—(1) A collecting bank must use ordinary care in

(a) presenting an item or sending it for presentation; and

(b) sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor or directly to the depositary bank under subsection (2) of Section 4-212 after learning that the item has not been paid or accepted, as the case may be; and

(c) settling for an item when the bank receives final settlement; and

(d) making or providing for any necessary protest; and

(e) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(2) A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing.

(3) Subject to subsection (1) (a), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in transit or in the possession of others.

Sec. 4-203. Effect of Instructions.—Subject to the provisions of Article 3 concerning conversion of instruments (Section 3-419) and the provisions of both Article 3 and this article concerning restrictive indorsements
5 only a collecting bank's transferor can give instructions
6 which affect the bank or constitute notice to it and a
7 collecting bank is not liable to prior parties for any ac-
8 tion taken pursuant to such instructions or in accordance
9 with any agreement with its transferor.

Sec. 4-204. Methods of Sending and Presenting; Send-
2 ing Direct to Payor Bank.—(1) A collecting bank must
3 send items by reasonably prompt method taking into
4 consideration any relevant instructions, the nature of
5 the item, the number of such items on hand, and the
6 cost of collection involved and the method generally
7 used by it or others to present such items.
8 (2) A collecting bank may send
9 (a) any item direct to the payor bank;
10 (b) any item to any non-bank payor if authorized
11 by its transferor; and
12 (c) any item other than documentary drafts to any
13 non-bank payor, if authorized by Federal Reserve regu-
14 lation or operating letter, clearing house rule or the like.
15 (3) Presentment may be made by a presenting bank
16 at a place where the payor bank has requested that pre-
17 sentment be made.

Sec. 4-205. Supplying Missing Indorsement; No Notice
2 from Prior Indorsement.—(1) A depositary bank which
3 has taken an item for collection may supply any indorse-
4 ment of the customer which is necessary to title unless
5 the item contains the words “payee's indorsement re-
6 quired” or the like. In the absence of such a requirement
7 a statement placed on the item by the depositary bank to
8 the effect that the item was deposited by a customer or
9 credited to his account is effective as the customer's in-
10 dorsement.
11 (2) An intermediary bank, or payor bank which is not
12 a depositary bank, is neither given notice nor otherwise
13 affected by a restrictive indorsement of any person except
14 the bank's immediate transferor.

Sec. 4-206. Transfer Between Banks.—Any agreed
2 method which identifies the transferor bank is sufficient
3 for the item's further transfer to another bank.
Sec. 4-207. Warranties of Customer and Collecting Bank on Transfer or Presentment of Items; Time for Claims.—(1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that

(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) to the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of an item with respect to an alteration made after the acceptance.

(2) Each customer and collecting bank who transfers an item and receives a settlement or other consideration
for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that
(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and
(b) all signatures are genuine or authorized; and
(c) the item has not been materially altered; and
(d) no defense of any party is good against him; and
(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item.
In addition each customer and collecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.
(3) The warranties and the engagement to honor set forth in the two preceding subsections arise notwithstanding the absence of indorsement or words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.
(4) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim.

Sec. 4-208. Security Interest of Collecting Bank in Items, Accompanying Documents and Proceeds.—(1) A bank has a security interest in an item and any accompanying documents or the proceeds of either
(a) in case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;
(b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the
credit given whether or not the credit is drawn upon and
whether or not there is a right of charge-back; or
(c) if it makes an advance on or against the item.
(2) When credit which has been given for several
items received at one time or pursuant to a single agree-
ment is withdrawn or applied in part the security interest
remains upon all the items, any accompanying documents
or the proceeds of either. For the purpose of this section,
credits first given are first withdrawn.
(3) Receipt by a collecting bank of a final settlement
for an item is a realization on its security interest in the
item, accompanying documents and proceeds. To the ex-
tent and so long as the bank does not receive final settle-
ment for the item or give up possession of the item or ac-
companying documents for purposes other than collect-
tion, the security interest continues and is subject to the
provisions of Article 9 except that
(a) no security agreement is necessary to make the
security interest enforceable (subsection (1) (b) of Sec-
tion 9-203); and
(b) no filing is required to perfect the security inter-
est; and
(c) the security interest has priority over conflicting
perfected security interests in the item, accompanying
documents or proceeds.

Sec. 4-209. When Bank Gives Value for Purposes of
Holder in Due Course.—For purposes of determining its
status as a holder in due course, the bank has given value
to the extent that it has a security interest in an item
provided that the bank otherwise complies with the re-
quirements of Section 3-302 on what constitutes a holder
in due course.

Sec. 4-210. Presentment by Notice of Item Not Pay-
able by, Through or at a Bank; Liability of Secondary
Parties.—(1) Unless otherwise instructed, a collecting
bank may present an item not payable by, through or
at a bank by sending to the party to accept or pay a
written notice that the bank holds the item for accept-
ance or payment. The notice must be sent in time to
be received on or before the day when presentment is
due and the bank must meet any requirement of the
party to accept or pay under Section 3-505 by the close
of the bank's next banking day after it knows of the
requirement.

(2) Where presentment is made by notice and neither
honor nor request for compliance with a requirement
under Section 3-505 is received by the close of business
on the day after maturity or in the case of demand items
by the close of business on the third banking day after
notice was sent, the presenting bank may treat the item
as dishonored and charge any secondary party by send-
ing him notice of the facts.

Sec. 4-211. Media of Remittance; Provisional and Final
Settlement in Remittance Cases.—(1) A collecting bank
may take in settlement of an item
(a) a check of the remitting bank or of another bank
on any bank except the remitting bank; or
(b) a cashier's check or similar primary obligation
of a remitting bank which is a member of or clears
through a member of the same clearing house or group
as the collecting bank; or
(c) appropriate authority to charge an account of
the remitting bank or of another bank with the collect-
ing bank; or
(d) if the item is drawn upon or payable by a per-
son other than a bank, a cashier's check, certified check
or other bank check or obligation.

(2) If before its midnight deadline the collecting
bank properly dishonors a remittance check or authori-
zation to charge on itself or presents or forwards for col-
lection a remittance instrument of or on another bank
which is of a kind approved by subsection (1) or has
not been authorized by it, the collecting bank is not
liable to prior parties in the event of the dishonor of
such check, instrument or authorization.

(3) A settlement for an item by means of a re-
mittance instrument or authorization to charge is or
becomes a final settlement as to both the person making
and the person receiving the settlement
(a) if the remittance instrument or authorization to charge is of a kind approved by subsection (1) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization,—at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;

(b) if the person receiving the settlement has authorized remittance by a non-bank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsection (1) (b),—at the time of the receipt of such remittance check or obligation; or

(c) if in a case not covered by subparagraphs (a) or (b) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline,—at such midnight deadline.

Sec. 4-212. Right of Charge-Back or Refund.—(1) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. These rights to revoke, charge-back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (subsection (3) of Section 4-211 and subsections (2) and (3) of Section 4-213).

(2) Within the time and manner prescribed by this section and Section 4-301, an intermediary or payor bank, as the case may be, may return an unpaid item directly
to the depositary bank and may send for collection a draft
on the depositary bank and obtain reimbursement. In
such case, if the depositary bank has received provisional
settlement for the item, it must reimburse the bank draw-
ing the draft and any provisional credits for the item be-
tween banks shall become and remain final.

(3) A depositary bank which is also the payor may
charge-back the amount of an item to its customer's ac-
count or obtain refund in accordance with the section
governing return of an item received by a payor bank for
credit on its books (Section 4-301).

(4) The right to charge-back is not affected by
(a) prior use of the credit given for the item; or
(b) failure by any bank to exercise ordinary care with
respect to the item but any bank so failing remains liable.

(5) A failure to charge-back or claim refund does not
affect other rights of the bank against the customer or any
other party.

(6) If credit is given in dollars as the equivalent of the
value of an item payable in a foreign currency the dollar
amount of any charge-back or refund shall be calculated
on the basis of the buying sight rate for the foreign cur-
rency prevailing on the day when the person entitled to
the charge-back or refund learns that it will not receive
payment in ordinary course.

Sec. 4-213. Final Payment of Item by Payor Bank;
When Provisional Debits and Credits Become Final;
When Certain Credits Become Available for Withdrawal.
—(1) An item is finally paid by a payor bank when the
bank has done any of the following, whichever happens
first:

(a) paid the item in cash; or
(b) settled for the item without reserving a right to
revoke the settlement and without having such right un-
der statute, clearing house rule or agreement; or
(c) completed the process of posting the item to the
indicated account of the drawer, maker or other person
to be charged therewith; or
(d) made a provisional settlement for the item and
failed to revoke the settlement in the time and manner
permitted by statute, clearing house rule or agreement.
Upon a final payment under subparagraphs (b), (c) or
(d) the payor bank shall be accountable for the amount
of the item.

(2) If provisional settlement for an item between the
presenting and payor banks is made through a clearing
house or by debits or credits in an account between them,
then to the extent that provisional debits or credits for
the item are entered in accounts between the presenting
and payor banks or between the presenting and success-
ive prior collecting banks seriatim, they become final
upon final payment of the item by the payor bank.

(3) If a collecting bank receives a settlement for an
item which is or becomes final (subsection (3) of Section
4-211, subsection (2) of Section 4-213) the bank is account-
able to its customer for the amount of the item and any
provisional credit given for the item in an account with
its customer becomes final.

(4) Subject to any right of the bank to apply the credit
to an obligation of the customer, credit given by a bank
for an item in an account with its customer becomes
available for withdrawal as of right
(a) in any case where the bank has received a provi-
sional settlement for the item,—when such settlement be-
comes final and the bank has had a reasonable time to
learn that the settlement is final;
(b) in any case where the bank is both a depositary
bank and a payor bank and the item is finally paid,—at
the opening of the bank's second banking day following
receipt of the item.

(5) A deposit of money in a bank is final when made
but, subject to any right of the bank to apply the deposit
to an obligation of the customer, the deposit becomes
available for withdrawal as of right at the opening of the
bank's next banking day following receipt of the deposit.

Sec. 4-214. Insolvency and Preference.—(1) Any item
in or coming into the possession of a payor or collecting
bank which suspends payment and which item is not fi-
nally paid shall be returned by the receiver, trustee or
agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (subsection (3) of Section 4-211, subsections (1) (d), (2) and (3) of Section 4-213).

(4) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer which is or becomes final, the owner of the item has a preferred claim against such collecting bank.

PART 3. COLLECTION OF ITEMS: PAYOR BANKS

Sec. 4-301. Deferred Posting; Recovery of Payment by Return of Items; Time of Dishonor.—(1) Where an authorized settlement for a demand item (other than a documentary draft) received by a payor bank otherwise than for immediate payment over the counter has been made before midnight of the banking day of receipt the payor bank may revoke the settlement and recover any payment if before it has made final payment (subsection (1) of Section 4-213) and before its midnight deadline it

(a) returns the item; or

(b) sends written notice of dishonor or nonpayment if the item is held for protest or is otherwise unavailable for return.

(2) If a demand item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts
within the time limit and in the manner specified in the
preceding subsection.

(3) Unless previous notice of dishonor has been sent
an item is dishonored at the time when for purposes of
dishonor it is returned or notice sent in accordance with
this section.

(4) An item is returned:
(a) as to an item received through a clearing house,
when it is delivered to the presenting or last collecting
bank or to the clearing house or is sent or delivered in ac-
cordance with its rules; or
(b) in all other cases, when it is sent or delivered to
the bank’s customer or transferor or pursuant to his in-
structions.

Sec. 4-302. Payor Bank’s Responsibility for Late Return
of Item.—In the absence of a valid defense such as breach
of a presentment warranty (subsection (1) of Section
4-207), settlement effected or the like, if an item is pre-
sented on and received by a payor bank the bank is
accountable for the amount of
(a) a demand item other than a documentary draft
whether properly payable or not if the bank, in any
case where it is not also the depositary bank, retains
the item beyond midnight of the banking day of receipt
without settling for it or, regardless of whether it is also
the depositary bank, does not pay or return the item
or send notice of dishonor until after its midnight dead-
line; or
(b) any other properly payable item unless within
the time allowed for acceptance or payment of that item
the bank either accepts or pays the item or returns it
and accompanying documents.

Sec. 4-303. When Items Subject to Notice, Stop-Order,
Legal Process or Setoff; Order in Which Items May Be
Charged or Certified.—(1) Any knowledge, notice or stop-
order received by, legal process served upon or setoff
exercised by a payor bank, whether or not effective under
other rules of law to terminate, suspend or modify the
bank’s right or duty to pay an item or to charge its cus-
tomer's account for the item, comes too late to so termi-
minate, suspend or modify such right or duty if the
knowledge, notice, stop-order or legal process is received
or served and a reasonable time for the bank to act
thereon expires or the setoff is exercised after the bank
has done any of the following:
(a) accepted or certified the item;
(b) paid the item in cash;
(c) settled for the item without reserving a right to
revoke the settlement and without having such right
under statute, clearing house rule or agreement;
(d) completed the process of posting the item to the
indicated account of the drawer, maker or other person
to be charged therewith or otherwise has evidenced by
examination of such indicated account and by action
its decision to pay the item; or
(e) become accountable for the amount of the item
under subsection (1) (d) of Section 4-213 and Section
4-302 dealing with the payor bank's responsibility for
late return of items.
(2) Subject to the provisions of subsection (1) items
may be accepted, paid, certified or charged to the in-
dicated account of its customer in any order convenient
to the bank.

PART 4. RELATIONSHIP BETWEEN PAYOR BANK
AND ITS CUSTOMER

Sec. 4-401. When Bank May Charge Customer's Ac-
count.—(1) As against its customer, a bank may charge
against his account any item which is otherwise prop-
erly payable from that account even though the charge
creates an overdraft.
(2) A bank which in good faith makes payment to
a holder may charge the indicated account of its cus-
tomer according to
(a) the original tenor of his altered item; or
(b) the tenor of his completed item, even though
the bank knows the item has been completed unless the
bank has notice that the completion was improper.
Sec. 4-402. Bank's Liability to Customer for Wrongful Dishonor.—A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. When the dishonor occurs through mistake liability is limited to actual damages proved. If so proximately caused and proved damages may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

Sec. 4-403. Customer's Right to Stop Payment; Burden of Proof of Loss.—(1) A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in Section 4-303.

(2) An oral order is binding upon the bank only for fourteen calendar days unless confirmed in writing within that period. A written order is effective for only six months unless renewed in writing.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer.

Sec. 4-404. Bank Not Obligated to Pay Check More Than Six Months Old.—A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer’s account for a payment made thereafter in good faith.

Sec. 4-405. Death or Incompetence of Customer.—(1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of
incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge a bank may for ten days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account.

Sec. 4-406. Customer's Duty to Discover and Report Unauthorized Signature or Alteration.—(1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

(2) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (1) the customer is precluded from asserting against the bank (a) his unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and (b) an unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period not exceeding fourteen calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration.

(3) The preclusion under subsection (2) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).

(4) Without regard to care or lack of care of either the customer or the bank a customer who does not with-
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in one year from the time the statement and items are made available to the customer (subsection (1)) dis-
cover and report his unauthorized signature or any alter-
ation on the face or back of the item or does not within three years from that time discover and report any un-
authorized indorsement is precluded from asserting against the bank such unauthorized signature or indorse-
ment or such alteration.

(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon re-
quest to assert the defense the bank may not assert against any collecting bank or other prior party pre-
senting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim.

Sec. 4-407. Payor Bank's Right to Subrogation on Im-
proper Payment.—If a payor bank has paid an item over the stop payment order of the drawer or maker or other-
wise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights

(a) of any holder in due course on the item against the drawer or maker; and

(b) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(c) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

PART 5. COLLECTION OF DOCUMENTARY DRAFTS

Sec. 4-501. Handling of Documentary Drafts; Duty to Send for Presentment and to Notify Customer of Dis-
honor.—A bank which takes a documentary draft for col-
lection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must
seasonably notify its customer of such fact even though
it may have discounted or bought the draft or extended
credit available for withdrawal as of right.

Sec. 4-502. Presentment of “On Arrival” Drafts.—When
a draft or the relevant instructions require presentment
“on arrival”, “when goods arrive” or the like, the collect-
ing bank need not present until in its judgment a reason-
able time for arrival of the goods has expired. Refusal
to pay or accept because the goods have not arrived is not
dishonor; the bank must notify its transferor of such re-
fusion but need not present the draft again until it is in-
structed to do so or learns of the arrival of the goods.

Sec. 4-503. Responsibility of Presenting Bank for Doc-
uments and Goods; Report of Reasons for Dishonor; Ref-
eree in Case of Need.—Unless otherwise instructed and
except as provided in Article 5 a bank presenting a docu-
men
tary draft
(a) must deliver the documents to the drawee on ac-
ceptance of the draft if it is payable more than three days
after presentment; otherwise, only on payment; and
(b) upon dishonor, either in the case of presentment
for acceptance or presentment for payment, may seek and
follow instructions from any referee in case of need des-
ignated in the draft or if the presenting bank does not
choose to utilize his services it must use diligence and
good faith to ascertain the reason for dishonor, must no-
tify its transferor of the dishonor and of the results of its
effort to ascertain the reasons therefor and must request
instructions.
But the presenting bank is under no obligation with re-
psect to goods represented by the documents except to fol-
low any reasonable instructions seasonably received; it
has a right to reimbursement for any expense incurred in
following instructions and to prepayment of or indemnity
for such expenses.

Sec. 4-504. Privilege of Presenting Bank to Deal With
Goods; Security Interest for Expenses.—(1) A presenting
bank which, following the dishonor of a documentary
draft, has seasonably requested instructions but does not
receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(2) For its reasonable expenses incurred by action under subsection (1) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

Article 5. Letters of Credit.

Section
5-101. Short title.
5-102. Scope.
5-103. Definitions.
5-104. Formal requirements; signing.
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5-107. Advice of credit; confirmation; error in statement of terms.
5-108. "Notation credit"; exhaustion of credit.
5-109. Issuer's obligation to its customer.
5-110. Availability of credit in portions; presenter's reservation of lien or claim.
5-111. Warranties on transfer and presentment.
5-112. Time allowed for honor or rejection; withholding honor or rejection by consent; "presenter".
5-113. Indemnities.
5-114. Issuer's duty and privilege to honor; right to reimbursement.
5-115. Remedy for improper dishonor or anticipatory repudiation.
5-116. Transfer and assignment.
5-117. Insolvency of bank holding funds for documentary credit.

Section 5-101. Short Title.—This article shall be known and may be cited as Uniform Commercial Code—Letters of Credit.

Sec. 5-102. Scope.—(1) This article applies
(a) to a credit issued by a bank if the credit requires a documentary draft or a documentary demand for payment; and
(b) to a credit issued by a person other than a bank if the credit requires that the draft or demand for payment be accompanied by a document of title; and
(c) to a credit issued by a bank or other person if the credit is not within subparagraphs (a) or (b) but conspicuously states that it is a letter of credit or is conspicuously so entitled.

(2) Unless the engagement meets the requirements of subsection (1), this article does not apply to engagements to make advances or to honor drafts or demands for pay-
ment to authorities to pay or purchase, to guarantees or to general agreements.

(3) This article deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to the effective date of this chapter or may hereafter develop. The fact that this article states a rule does not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by this article.

Sec. 5-103. Definitions.—(1) In this article unless the context otherwise requires
(a) “Credit” or “letter of credit” means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this article (Section 5-102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.
(b) A “documentary draft” or a “documentary demand for payment” is one honor of which is conditioned upon the presentation of a document or documents. “Document” means any paper including document of title, security, invoice, certificate, notice of default and the like.
(c) An “issuer” is a bank or other person issuing a credit.
(d) A “beneficiary” of a credit is a person who is entitled under its terms to draw or demand payment.
(e) An “advising bank” is a bank which gives notification of the issuance of a credit by another bank.
(f) A “confirming bank” is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank.
(g) A “customer” is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank’s customer.
(2) Other definitions applying to this article and the sections in which they appear are:

- "Notation of Credit". Section 5-108.
- "Presenter". Section 5-112 (3).

(3) Definitions in other articles of this chapter applying to this article and the sections in which they appear are:

- "Accept" or "Acceptance". Section 3-410.
- "Contract for sale". Section 2-106.
- "Draft". Section 3-104.
- "Holder in due course". Section 3-302.
- "Midnight deadline". Section 4-104.
- "Security". Section 8-102.

(4) In addition, Article 1 of this chapter contains general definitions and principles of construction and interpretation applicable throughout this article.

Sec. 5-104. Formal Requirements; Signing.—(1) Except as otherwise required in subsection (1) (c) of Section 5-102 on scope, no particular form of phrasing is required for a credit. A credit must be in writing and signed by the issuer and a confirmation must be in writing and signed by the confirming bank. A modification of the terms of a credit or confirmation must be signed by the issuer or confirming bank.

(2) A telegram may be a sufficient signed writing if it identifies its sender by an authorized authentication. The authentication may be in code and the authorized naming of the issuer in an advice of credit is a sufficient signing.

Sec. 5-105. Consideration.—No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms.

Sec. 5-106. Time and Effect of Establishment of Credit.—(1) Unless otherwise agreed a credit is established (a) as regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and

(b) as regards the beneficiary when he receives a
8 letter of credit or an authorized written advice of its issuance.

9 (2) Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.

10 (3) Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer without notice to or consent from the customer or beneficiary.

11 (4) Notwithstanding any modification or revocation of a revocable credit any person authorized to honor or negotiate under the terms of the original credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modification or revocation and the issuer in turn is entitled to reimbursement from its customer.

Sec. 5-107. Advice of Credit; Confirmation; Error in Statement of Terms.—(1) Unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement.

2 (2) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

3 (3) Even though an advising bank incorrectly advises the terms of a credit it has been authorized to advise the credit is established as against the issuer to the extent of its original terms.

4 (4) Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit.
Sec. 5-108. “Notation Credit”; Exhaustion of Credit.—
1 (1) A credit which specifies that any person purchasing
2 or paying drafts drawn or demands for payment made
3 under it must note the amount of the draft or demand
4 on the letter or advice of credit is a “notation credit”.
5
6 (2) Under a notation credit
7 (a) a person paying the beneficiary or purchasing
8 a draft or demand for payment from him acquires a right
9 to honor only if the appropriate notation is made and
10 by transferring or forwarding for honor the documents
11 under the credit such a person warrants to the issuer
12 that the notation has been made; and
13 (b) unless the credit or a signed statement that an
14 appropriate notation has been made accompanies the
15 draft or demand for payment the issuer may delay honor
16 until evidence of notation has been procured which is
17 satisfactory to it but its obligation and that of its cus-
18 tomer continue for a reasonable time not exceeding
19 thirty days to obtain such evidence.
20 (3) If the credit is not a notation credit
21 (a) the issuer may honor complying drafts or de-
22 mands for payment presented to it in the order in which
23 they are presented and is discharged pro tanto by honor
24 of any such draft or demand;
25 (b) as between competing good faith purchasers of
26 complying drafts or demands the person first purchasing
27 has priority over a subsequent purchaser even though
28 the later purchased draft or demand has been first hon-
29 ored.

Sec. 5-109. Issuer’s Obligation to Its Customer.—(1) An
1 issuer’s obligation to its customer includes good faith
2 and observance of any general banking usage but unless
3 otherwise agreed does not include liability or respon-
4 sibility
5 (a) for performance of the underlying contract for
6 sale or other transaction between the customer and the
7 beneficiary; or
8 (b) for any act or omission of any person other than
9 itself or its own branch or for loss or destruction of a
draft, demand or document in transit or in the possession of others; or

(c) based on knowledge or lack of knowledge of any usage of any particular trade.

(2) An issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit but unless otherwise agreed assumes no liability or responsibility for the genuineness, falsification or effect of any document which appears on such examination to be regular on its face.

(3) A non-bank issuer is not bound by any banking usage of which it has no knowledge.

Sec. 5-110. Availability of Credit in Portions; Presenter's Reservation of Lien or Claim.—(1) Unless otherwise specified a credit may be used in portions in the discretion of the beneficiary.

(2) Unless otherwise specified a person by presenting a documentary draft or demand for payment under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or demand or causing such presentment authorizes such relinquishment. An explicit reservation of claim makes the draft or demand non-complying.

Sec. 5-111. Warranties on Transfer and Presentment.—(1) Unless otherwise agreed the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with. This is in addition to any warranties arising under Articles 3, 4, 7 and 8.

(2) Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under Article 4 and any such bank transferring a document warrants only the matters warrant-ed by an intermediary under Articles 7 and 8.

Sec. 5-112. Time Allowed for Honor or Rejection; Withholding Honor or Rejection by Consent; "Presenter".—(1)
A bank to which a documentary draft or demand for payment is presented under a credit may without dishonor of the draft, demand or credit

(a) defer honor until the close of the third banking day following receipt of the documents; and

(b) further defer honor if the presenter has expressly or impliedly consented thereto.

Failure to honor within the time here specified constitutes dishonor of the draft or demand and of the credit except as otherwise provided in subsection (4) of Section 5-114 on conditional payment.

(2) Upon dishonor the bank may unless otherwise instructed fulfill its duty to return the draft or demand and the documents by holding them at the disposal of the presenter and sending him an advice to that effect.

(3) “Presenter” means any person presenting a draft or demand for payment for honor under a credit even though that person is a confirming bank or other correspondent which is acting under an issuer’s authorization.

Sec. 5-113. Indemnities.—(1) A bank seeking to obtain (whether for itself or another) honor, negotiation or reimbursement under a credit may give an indemnity to induce such honor, negotiation or reimbursement.

(2) An indemnity agreement inducing honor, negotiation or reimbursement

(a) unless otherwise explicitly agreed applies to defects in the documents but not in the goods; and

(b) unless a longer time is explicitly agreed expires at the end of ten business days following receipt of the documents by the ultimate customer unless notice of objection is sent before such expiration date. The ultimate customer may send notice of objection to the person from whom he received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline.

Sec. 5-114. Issuer’s Duty and Privilege to Honor; Right to Reimbursement.—(1) An issuer must honor a draft or demand for payment which complies with the terms of
the relevant credit regardless of whether the goods or
documents conform to the underlying contract for sale
or other contract between the customer and the bene-
ficiary. The issuer is not excused from honor of such a
draft or demand by reason of an additional general term
that all documents must be satisfactory to the issuer,
but an issuer may require that specified documents must
be satisfactory to it.

(2) Unless otherwise agreed when documents appear
on their face to comply with the terms of a credit but
a required document does not in fact conform to the
warranties made on negotiation or transfer of a docu-
ment of title (Section 7-507) or of a security (Section
8-306) or is forged or fraudulent or there is fraud in the
transaction

(a) the issuer must honor the draft or demand for
payment if honor is demanded by a negotiating bank
or other holder of the draft or demand which has taken
the draft or demand under the credit and under circum-
stances which would make it a holder in due course
(Section 3-302) and in an appropriate case would make
it a person to whom a document of title has been duly
negotiated (Section 7-502) or a bona fide purchaser of
a security (Section 8-302); and

(b) in all other cases as against its customer, an
issuer acting in good faith may honor the draft or de-
mand for payment despite notification from the cus-
tomer of fraud, forgery or other defect not apparent on
the face of the documents but a court of appropriate
jurisdiction may enjoin such honor.

(3) Unless otherwise agreed an issuer which has
duly honored a draft or demand for payment is entitled
to immediate reimbursement of any payment made un-
der the credit and to be put in effectively available funds
not later than the day before maturity of any accept-
ance made under the credit.

(4) When a credit provides for payment by the issuer
on receipt of notice that the required documents are in
the possession of a correspondent or other agent of the
issuer
(a) any payment made on receipt of such notice is conditional; and

(b) the issuer may reject documents which do not comply with the credit if it does so within three banking days following its receipt of the documents; and

(c) in the event of such rejection, the issuer is entitled by charge back or otherwise to return of the payment made.

(5) In the case covered by subsection (4) failure to reject documents within the time specified in subparagraph (b) constitutes acceptance of the documents and makes the payment final in favor of the beneficiary.

Sec. 5-115. Remedy for Improper Dishonor or Anticipatory Repudiation.—(1) When an issuer wrongfully dishonors a draft or demand for payment presented under a credit the person entitled to honor has with respect to any documents the rights of a person in the position of a seller (Section 2-707) and may recover from the issuer the face amount of the draft or demand together with incidental damages under Section 2-710 on seller's incidental damages and interest but less any amount realized by resale or other use or disposition of the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.

(2) When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under Section 2-610 if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor.

Sec. 5-116. Transfer and Assignment.—(1) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

(2) Even though the credit specifically states that
it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of a contract right under Article 9 on Secured Transactions and is governed by that article except that

(a) the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under Article 9; and

(b) the issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and

(c) after what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

(3) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit.

Sec. 5-117. Insolvency of Bank Holding Funds for Documentary Credit.—(1) Where an issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which this article is made applicable by paragraphs (a) or (b) of Section 5-102 (1) on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:

(a) to the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in preference over depositors or other general creditors of the issuer or bank; and
(b) on expiration of the credit or surrender of the 
beneficiary's rights under it unused any person who has 
given such funds or collateral is similarly entitled to 
return thereof; and 
(c) a charge to a general or current account with a 
bank if specifically consented to for the purpose of in-
demnity against or payment of drafts or demands for 
payment drawn under the designated credit falls under 
the same rules as if the funds had been drawn out in 
cash and then turned over with specific instructions.
(2) After honor or reimbursement under this section 
the customer or other person for whose account the in-
solvent bank has acted is entitled to receive the docu-
ments involved.


Sec. 6-101. Short Title.—This article shall be known 
and may be cited as Uniform Commercial Code—Bulk 
Transfers.

Sec. 6-102. "Bulk Transfer"; Transfers of Equipment; 
Enterprises Subject to This Article; Bulk Transfers Sub-
ject to This Article.—(1) A "bulk transfer" is any transfer 
in bulk and not in the ordinary course of the transferor's 
business of a major part of the materials, supplies, mer-
chandise or other inventory (Section 9-109) of an enter-
prise subject to this article.
(2) A transfer of a substantial part of the equipment 
(Section 9-109) of such an enterprise is a bulk transfer 
if it is made in connection with a bulk transfer of in-
ventory, but not otherwise.
The enterprises subject to this article are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell. Except as limited by the following section all bulk transfers of goods located within this state are subject to this article.

Sec. 6-103. Transfers Excepted From This Article.—The following transfers are not subject to this article:

1. Those made to give security for the performance of an obligation;
2. General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;
3. Transfers in settlement or realization of a lien or other security interest;
4. Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;
5. Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;
6. Transfers to a person maintaining a known place of business in this state who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;
7. A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;
8. Transfers of property which is exempt from execution.

Public notice under subsection (6) or subsection (7) may be given by publishing once a week for two consecutive weeks in a newspaper of general circulation where the transferor had its principal place of business in this state.
state an advertisement including the names and addresses of the transferor and transferee and the effective date of the transfer.

Sec. 6-104. Schedule of Property, List of Creditors.—
(1) Except as provided with respect to auction sales (Section 6-108), a bulk transfer subject to this article is ineffective against any creditor of the transferor unless:
(a) The transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and
(b) The parties prepare a schedule of the property transferred sufficient to identify it; and
(c) The transferee preserves the list and schedule for six months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in the office of the county clerk for the county in which the principal place of business of the transferor is located.
(2) The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.
(3) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge.

Sec. 6-105. Notice to Creditors.—In addition to the requirements of the preceding section, any bulk transfer subject to this article except one made by auction sale (Section 6-108) is ineffective against any creditor of the
transferee unless at least ten days before he takes pos-
session of the goods or pays for them, whichever happens
first, the transferee gives notice of the transfer in the
manner and to the persons hereafter provided (Section
6-107).

Sec. 6-106. Application of the Proceeds.—In addition to
the requirements of the two preceding sections:
(1) Upon every bulk transfer subject to this article for
which new consideration becomes payable except those
made by sale at auction it is the duty of the transferee to
assure that such consideration is applied so far as neces-
sary to pay those debts of the transferor which are either
shown on the list furnished by the transferor (Section 6-
104) or filed in writing in the place stated in the notice
(Section 6-107) within thirty days after the mailing of
such notice. This duty of the transferee runs to all the
holders of such debts, and may be enforced by any of them
for the benefit of all.
(2) If any of said debts are in dispute the necessary
sum may be withheld from distribution until the dispute
is settled or adjudicated.
(3) If the consideration payable is not enough to pay
all of the said debts in full distribution shall be made pro
rata.
(4) The transferee may within ten days after he takes
possession of the goods pay the consideration into the cir-
cuit court in the county where the transferor had its prin-
cipal place of business in this state and thereafter may
discharge his duty under this section by giving notice by
registered or certified mail to all the persons to whom the
duty runs that the consideration has been paid into that
court and that they should file their claims there. On
motion of any interested party, the court may order the
distribution of the consideration to the persons entitled
to it.

Sec. 6-107. The Notice.—(1) The notice to creditors
(Section 6-105) shall state:
(a) that a bulk transfer is about to be made; and
(b) the names and business addresses of the transferor
and transferee, and all other business names and addresses
used by the transferor within three years last past so far as known to the transferee; and

(c) whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

(a) the location and general description of the property to be transferred and the estimated total of the transferor’s debts;

(b) the address where the schedule of property and list of creditors (Section 6-104) may be inspected;

(c) whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;

(d) whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment; and

(e) if for new consideration the time and place where creditors of the transferor are to file their claims.

(3) The notice in any case shall be delivered personally or sent by registered or certified mail to all the persons shown on the list of creditors furnished by the transferor (Section 6-104) and to all other persons who are known to the transferee to hold or assert claims against the transferor.

Sec. 6-108. Auction Sales; “Auctioneer”.—(1) A bulk transfer is subject to this article even though it is by sale at auction, but only in the manner and with the results stated in this section.

(2) The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (Section 6-104).

(3) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the “auctioneer”. The auctioneer shall:

(a) receive and retain the list of creditors and pre-
pare and retain the schedule of property for the period stated in this article (Section 6-104);

(b) give notice of the auction personally or by registered or certified mail at least ten days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor; and

(c) assure that the net proceeds of the auction are applied as provided in this article (Section 6-106).

(4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several.

Sec. 6-109. What Creditors Protected; Credit for Payment to Particular Creditors.—(1) The creditors of the transferor mentioned in this article are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (Sections 6-105 and 6-107) are not entitled to notice.

(2) Against the aggregate obligation imposed by the provisions of this article concerning the application of the proceeds (Section 6-106 and subsection (3) (c) of 6-108) the transferee or auctioneer is entitled to credit for sums paid to particular creditors of the transferor, not exceeding the sums believed in good faith at the time of the payment to be properly payable to such creditors.

Sec. 6-110. Subsequent Transfers.—When the title of a transferee to property is subject to a defect by reason of his non-compliance with the requirements of this article, then:

(1) a purchaser of any of such property from such transferee who pays no value or who takes with notice
of such non-compliance takes subject to such defect, but
(2) a purchaser for value in good faith and without
such notice takes free of such defect.

Sec. 6-111. Limitation of Actions and Levies.—No
action under this article shall be brought nor levy made
more than six months after the date on which the trans-
ferree took possession of the goods unless the transfer
has been concealed. If the transfer has been concealed,
actions may be brought or levies made within six months
after its discovery.

Article 7. Warehouse Receipts, Bills of Lading and Other
Documents of Title.

PART 1. GENERAL

Section
7-101. Short title.
7-102. Definitions and index of definitions.
7-103. Relation of article to treaty, statute, tariff, classification or regu-
lation.
7-104. Negotiable and non-negotiable warehouse receipt, bill of lading
or other document of title.
7-105. Construction against negative implication.

PART 2. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

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bond.
7-202. Form of warehouse receipt; essential terms; optional terms.
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7-204. Duty of care; contractual limitation of warehouseman's liability.
7-205. Title under warehouse receipt defeated in certain cases.
7-206. Termination of storage at warehouseman's option.
7-207. Goods must be kept separate; fungible goods.
7-208. Altered warehouse receipts.
7-209. Lien of warehouseman.
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PART 3. BILLS OF LADING: SPECIAL PROVISIONS

7-301. Liability for non-receipt or misdescription; "said to contain";
"shipper's load and count"; improper handling.
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PART 4. WAREHOUSE RECEIPTS AND BILLS OF LADING: GEN-
ERAL OBLIGATIONS

7-401. Irregularities in issue of receipt or bill or conduct of issuer.
7-402. Duplicate receipt or bill; overissue.
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7-501. Form of negotiation and requirements of "due negotiation".
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7-505. Indorser not a guarantor for other parties.
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7-507. Warranties on negotiation or transfer of receipt or bill.
7-508. Warranties of collecting bank as to documents.
7-509. Receipt or bill: when adequate compliance with commercial contract.

PART 6. WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

7-601. Lost and missing documents.
7-602. Attachment of goods covered by a negotiable document.
7-603. Conflicting claims; interpleader.

PART 1. GENERAL

Section 7-101. Short Title.—This article shall be known and may be cited as Uniform Commercial Code—Documents of Title.

Sec. 7-102. Definitions and Index of Definitions.—(1)
In this article, unless the context otherwise requires:
(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.
(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.
(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.
(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.
(e) "Document" means document of title as defined in the general definitions in Article 1 (Section 1-201).
(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.
(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order
it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

"Duly negotiate". Section 7-501.

"Person entitled under the document". Section 7-403 (4).

(3) Definitions in other articles of this chapter applying to this article and the sections in which they appear are:

"Contract for sale". Section 2-106.

"Overseas". Section 2-323.

"Receipt" of goods. Section 2-103.

(4) In addition Article 1 of this chapter contains general definitions and principles of construction and interpretation applicable throughout this article.

Sec. 7-103. Relation of Article to Treaty, Statute, Tariff, Classification or Regulation.—To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this article are subject thereto.

Sec. 7-104. Negotiable and Non-Negotiable Warehouse Receipt, Bill of Lading or Other Document of Title.—(1) A warehouse receipt, bill of lading or other document of title is negotiable

(a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) where recognized in overseas trade, if it runs to a named person or assigns.
(2) Any other document is non-negotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person.

Sec. 7-105. Construction Against Negative Implication.
—The omission from either Part 2 or Part 3 of this article of a provision corresponding to a provision made in the other Part does not imply that a corresponding rule of law is not applicable.

PART 2. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

Sec. 7-201. Who May Issue a Warehouse Receipt; Storage Under Government Bond.—(1) A warehouse receipt may be issued by any warehouseman.
(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman.

Sec. 7-202. Form of Warehouse Receipt; Essential Terms; Optional Terms.—(1) A warehouse receipt need not be in any particular form.
(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:
(a) the location of the warehouse where the goods are stored;
(b) the date of issue of the receipt;
(c) the consecutive number of the receipt;
(d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;
(e) the rate of storage and handling charges, except that where goods are stored under a field warehousing
arrangement a statement of that fact is sufficient on a 
non-negotiable receipt;
(f) a description of the goods or of the packages con-
taining them;
(g) the signature of the warehouseman, which may 
be made by his authorized agent;
(h) if the receipt is issued for goods of which the 
warehouseman is owner, either solely or jointly or in 
common with others, the fact of such ownership; and
(i) a statement of the amount of advances made and 
of liabilities incurred for which the warehouseman claims 
a lien or security interest (Section 7-209). If the precise 
amount of such advances made or of such liabilities in-
curred is, at the time of the issue of the receipt, unknown 
to the warehouseman or to his agent who issues it, a state-
ment of the fact that advances have been made or liabili-
ties incurred and the purpose thereof is sufficient.
(3) A warehouseman may insert in his receipt any 
other terms which are not contrary to the provisions of 
this chapter and do not impair his obligation of delivery 
(Section 7-403) or his duty of care (Section 7-204.) Any 
contrary provisions shall be ineffective.

Sec. 7-203. Liability for Non-Receipt or Misdescription.
A party to or purchaser for value in good faith of a doc-
ument of title other than a bill of lading relying in either 
case upon the description therein of the goods may re-
cover from the issuer damages caused by the non-receipt 
or misdescription of the goods, except to the extent that 
the document conspicuously indicates that the issuer does 
not know whether any part or all of the goods in fact were 
received or conform to the description, as where the de-
scription is in terms of marks or labels or kind, quantity 
or condition, or the receipt or description is qualified by 
“contents, condition and quality unknown”, “said to con-
tain” or the like, if such indication be true, or the party 
or purchaser otherwise has notice.

Sec. 7-204. Duty of Care; Contractual Limitation of 
Warehouseman’s Liability.—(1) A warehouseman is liable 
for damages for loss of or injury to the goods caused by
his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable: Provided, however, That such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

Sec. 7-205. Title Under Warehouse Receipt Defeated in Certain Cases.—A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated.

Sec. 7-206. Termination of Storage at Warehouseman's Option.—(1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date
specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman’s lien (Section 7-210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this article upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods.

Sec. 7-207. Goods Must Be Kept Separate; Fungible Goods.—(1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that
owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

Sec. 7-208. Altered Warehouse Receipts.—Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor.

Sec. 7-209. Lien of Warehouseman.—(1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the article on Secured Transactions (Article 9).

(3) A warehouseman's lien for charges and expenses
under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under Section 7-503.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

Sec. 7-210. Enforcement of Warehouseman's Lien—(1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or
sent by registered or certified letter to the last known
address of any person to be notified.

(c) The notification must include an itemized state-
ment of the claim, a description of the goods subject to
the lien, a demand for payment within a specified time
not less than ten days after receipt of the notification,
and a conspicuous statement that unless the claim is
paid within that time the goods will be advertised for
sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the noti-
40 fica-tion.

(e) The sale must be held at the nearest suitable
42 place to that where the goods are held or stored.

(f) After the expiration of the time given in the
44 notification, an advertisement of the sale must be pub-
45 lished once a week for two weeks consecutively in a
46 newspaper of general circulation where the sale is to be
47 held. The advertisement must include a description of
48 the goods, the name of the person on whose account they
49 are being held, and the time and place of the sale. The
50 sale must take place at least fifteen days after the first
51 publication. If there is no newspaper of general cir-
52 culation where the sale is to be held, the advertisement
53 must be posted at least ten days before the sale in not
54 less than six conspicuous places in the neighborhood of
55 the proposed sale.

(3) Before any sale pursuant to this section any
57 person claiming a right in the goods may pay the amount
58 necessary to satisfy the lien and the reasonable expenses
59 incurred under this section. In that event the goods
60 must not be sold, but must be retained by the ware-
61 houseman subject to the terms of the receipt and this
62 article.

(4) The warehouseman may buy at any public sale
64 pursuant to this section.

(5) A purchaser in good faith of goods sold to en-
66 force a warehouseman's lien takes the goods free of any
67 rights of persons against whom the lien was valid, de-
68 spite noncompliance by the warehouseman with the
69 requirements of this section.
(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

PART 3. BILLS OF LADING: SPECIAL PROVISIONS

Sec. 7-301. Liability for Non-Receipt or Misdescription; “Said to Contain”; “Shipper’s Load and Count”; Improper Handling.—(1) A consignee of a non-negotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the non-receipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by “contents or condition of contents of packages unknown”, “said to contain”, “shipper’s weight, load and count” or the like, if such indication be true.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases “shipper’s weight, load and count” or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.
(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

(4) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper, and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

Sec. 7-302. Through Bills of Lading and Similar Documents.—(1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is dis-
charged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor.

Sec. 7-303. Diversion; Reconsignment; Change of Instructions.—(1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from
(a) the holder of a negotiable bill; or
(b) the consignor on a non-negotiable bill notwithstanding contrary instructions from the consignee; or
(c) the consignee on a non-negotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or
(d) the consignee on a non-negotiable bill if he is entitled as against the consignor to dispose of them.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms.

Sec. 7-304. Bills of Lading in a Set.—(1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) Where a bill of lading is lawfully issued in a set
of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier’s obligation by surrender of his part.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with Part 4 of this article against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee’s obligation on the whole bill.

Sec. 7-305. Destination Bills.—(1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request.

Sec. 7-306. Altered Bills of Lading.—An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

Sec. 7-307. Lien of Carrier.—(1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier’s lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by
law to receive for transportation is effective against the
consignor or any person entitled to the goods unless the
carrier had notice that the consignor lacked authority
to subject the goods to such charges and expenses. Any
other lien under subsection (1) is effective against the
consignor and any person who permitted the bailor to
have control or possession of the goods unless the car-
rrier had notice that the bailor lacked such authority.

(3) A carrier loses his lien on any goods which he
voluntarily delivers or which he unjustifiably refuses
to deliver.

Sec. 7-308. Enforcement of Carrier’s Lien.—(1) A car-
rier’s lien may be enforced by public or private sale of
the goods, in bloc or in parcels, at any time or place and
on any terms which are commercially reasonable, after
notifying all persons known to claim an interest in the
goods. Such notification must include a statement of
the amount due, the nature of the proposed sale and the
time and place of any public sale. The fact that a better
price could have been obtained by a sale at a different
time or in a different method from that selected by the
carrier is not of itself sufficient to establish that the sale
was not made in a commercially reasonable manner.
If the carrier either sells the goods in the usual manner
in any recognized market therefor or if he sells at the
price current in such market at the time of his sale or
if he has otherwise sold in conformity with commer-
cially reasonable practices among dealers in the type of
goods sold he has sold in a commercially reasonable
manner. A sale of more goods than apparently neces-
sary to be offered to ensure satisfaction of the obliga-
tion is not commercially reasonable except in cases
covered by the preceding sentence.

(2) Before any sale pursuant to this section any per-
son claiming a right in the goods may pay the amount
necessary to satisfy the lien and the reasonable expenses
incurred under this section. In that event the goods
must not be sold, but must be retained by the carrier
subject to the terms of the bill and this article.

(3) The carrier may buy at any public sale pur-
suant to this section.
(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in subsection (2) of Section 7-210.

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

Sec. 7-309. Duty of Care; Contractual Limitation of Carrier's Liability.—(1) A carrier who issues a bill of lading whether negotiable or non-negotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff.
PART 4. WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

Sec. 7-401. Irregularities in Issue of Receipt or Bill or Conduct of Issuer.—The obligations imposed by this article on an issuer apply to a document of title regardless of the fact that

(a) the document may not comply with the requirements of this article or of any other law or regulation regarding its issue, form or content; or

(b) the issuer may have violated laws regulating the conduct of his business; or

(c) the goods covered by the document were owned by the bailee at the time the document was issued; or

(d) the person issuing the document does not come within the definition of a warehouseman if it purports to be a warehouse receipt.

Sec. 7-402. Duplicate Receipt or Bill; Overissue.—Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face.

Sec. 7-403. Obligation of Warehouseman or Carrier to Deliver; Excuse.—(1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) delivery of the goods to a person whose receipt was rightful as against a claimant;

(b) damage to or delay, loss or destruction of the goods for which the bailee is not liable;

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;
13 (d) the exercise by a seller of his right to stop de-
14 livery pursuant to the provisions of the article on Sales
15 (Section 2-705);
16 (e) a diversion, reconsignment or other disposition
17 pursuant to the provisions of this article (Section 7-303)
18 or tariff regulating such right;
19 (f) release, satisfaction or any other fact affording
20 a personal defense against the claimant;
21 (g) any other lawful excuse.
22 (2) A person claiming goods covered by a docu-
23 ment of title must satisfy the bailee’s lien where the
24 bailee so requests or where the bailee is prohibited by
25 law from delivering the goods until the charges are
26 paid.
27 (3) Unless the person claiming is one against whom
28 the document confers no right under Section 7-503 (1), he
29 must surrender for cancellation or notation of partial
30 deliveries any outstanding negotiable document cover-
31 ing the goods, and the bailee must cancel the document
32 or conspicuously note the partial delivery thereon or be
33 liable to any person to whom the document is duly
34 negotiated.
35 (4) “Person entitled under the document” means
36 holder in the case of a negotiable document, or the per-
37 son to whom delivery is to be made by the terms of or
38 pursuant to written instructions under a non-negotiable
39 document.

Sec. 7-404. No Liability for Good Faith Delivery Pur-
2 suant to Receipt or Bill.—A bailee who in good faith
3 including observance of reasonable commercial stand-
4 ards has received goods and delivered or otherwise
5 disposed of them according to the terms of the document
6 of title or pursuant to this article is not liable therefor.
7 This rule applies even though the person from whom he
8 received the goods had no authority to procure the
9 document or to dispose of the goods and even though
10 the person to whom he delivered the goods had no author-
11 ity to receive them.
PART 5. WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

Sec. 7-501. Form of Negotiation and Requirements of "Due Negotiation".—(1) A negotiable document of title running to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2) (a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer.

(b) When a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

(4) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(5) Indorsement of a non-negotiable document neither makes it negotiable nor adds to the transferee's rights.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods.

Sec. 7-502. Rights Acquired by Due Negotiation.—(1) Subject to the following section and to the provisions of Section 7-205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) title to the document;

(b) title to the goods;
(c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and
(d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this article. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person.

Sec. 7-503. Document of Title to Goods Defeated in Certain Cases.—(1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither
(a) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this article (Section 7-403) or with power of disposition under this chapter (Sections 2-403 and 9-307) or other statute or rule of law; nor
(b) acquiesced in the procurement by the bailor or his nominee of any document of title.
(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be
19 defeated under the next section to the same extent as
20 the rights of the issuer or a transferee from the issuer.
21 (3) Title to goods based upon a bill of lading issued
22 to a freight forwarder is subject to the rights of anyone
23 to whom a bill issued by the freight forwarder is duly
24 negotiated; but delivery by the carrier in accordance
25 with Part 4 of this article pursuant to its own bill of
26 lading discharges the carrier's obligation to deliver.

Sec. 7-504. Rights Acquired in the Absence of Due
2 Negotiation; Effect of Diversion; Seller's Stoppage of De-
3 liver.-(1) A transferee of a document, whether nego-
4 tiable or non-negotiable, to whom the document has been
5 delivered but not duly negotiated, acquires the title and
6 rights which his transferor had or had actual authority
7 to convey.
8 (2) In the case of a non-negotiable document, until
9 but not after the bailee receives notification of the trans-
10 fer, the rights of the transferee may be defeated
11 (a) by those creditors of the transferor who could
12 treat the sale as void under Section 2-402; or
13 (b) by a buyer from the transferor in ordinary course
14 of business if the bailee has delivered the goods to the
15 buyer or received notification of his rights; or
16 (c) as against the bailee by good faith dealings of the
17 bailee with the transferor.
18 (3) A diversion or other change of shipping instruc-
19 tions by the consignor in a non-negotiable bill of lading
20 which causes the bailee not to deliver to the consignee de-
21 feats the consignee's title to the goods if they have been
22 delivered to a buyer in ordinary course of business and in
23 any event defeats the consignee's rights against the bailee.
24 (4) Delivery pursuant to a non-negotiable document
25 may be stopped by a seller under Section 2-705, and sub-
26 ject to the requirement of due notification there provided.
27 A bailee honoring the seller's instructions is entitled to be
28 indemnified by the seller against any resulting loss or ex-
29 pense.

Sec. 7-505. Indorser Not a Guarantor for Other Parties.
2 —The indorsement of a document of title issued by a
bailee does not make the indorser liable for any default by the bailee or by previous indorsers.

Sec. 7-506. Delivery Without Indorsement; Right to Compel Indorsement.—The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary indorsement but the transfer becomes a negotiation only as of the time the indorsement is supplied.

Sec. 7-507. Warranties on Negotiation or Transfer of Receipt or Bill.—Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods
(a) that the document is genuine; and
(b) that he has no knowledge of any fact which would impair its validity or worth; and
(c) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

Sec. 7-508. Warranties of Collecting Bank as to Documents.—A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected.

Sec. 7-509. Receipt or Bill: When Adequate Compliance With Commercial Contract.—The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the articles on Sales (Article 2) and on Letters of Credit (Article 5).

PART 6. WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

Sec. 7-601. Lost and Missing Documents.—(1) If a document has been lost, stolen or destroyed, a court may
order delivery of the goods or issuance of a substitute
document and the bailee may without liability to any per-
son comply with such order. If the document was nego-
tiable the claimant must post security approved by the
court to indemnify any person who may suffer loss as a
result of non-surrender of the document. If the docu-
ment was not negotiable, such security may be required
at the discretion of the court. The court may also in its
discretion order payment of the bailee’s reasonable costs
and counsel fees.

(2) A bailee who without court order delivers goods
to a person claiming under a missing negotiable docu-
ment is liable to any person injured thereby, and if the
delivery is not in good faith becomes liable for conversion.
Delivery in good faith is not conversion if made in ac-
cordance with a filed classification or tariff or, where no
classification or tariff is filed, if the claimant posts security
with the bailee in an amount at least double the value of
the goods at the time of posting to indemnify any person
injured by the delivery who files a notice of claim within
one year after the delivery.

Sec. 7-602. Attachment of Goods Covered by a Nego-
tiable Document.—Except where the document was origi-
nally issued upon delivery of the goods by a person who
had no power to dispose of them, no lien attaches by vir-
tue of any judicial process to goods in the possession of a
bailee for which a negotiable document of title is out-
standing unless the document be first surrendered to the
bailee or its negotiation enjoined, and the bailee shall not
be compelled to deliver the goods pursuant to process un-
til the document is surrendered to him or impounded by
the court. One who purchases the document for value
without notice of the process or injunction takes free of
the lien imposed by judicial process.

Sec. 7-603. Conflicting Claims; Interpleader.—If more
than one person claims title or possession of the goods, the
bailee is excused from delivery until he has had a reason-
able time to ascertain the validity of the adverse claims
or to bring an action to compel all claimants to interplead
and may compel such interpleader, either in defending an
7 action for non-delivery of the goods, or by original action,
8 whichever is appropriate.

Article 8. Investment Securities.

PART 1. SHORT TITLE AND GENERAL MATTERS

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8-103. Issuer's lien.
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8-308. Indorsement, how made; special indorsement; indorser not a guarantor; partial assignment.
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8-311. Effect of unauthorized indorsement.
8-312. Effect of guaranteeing signature or indorsement.
8-313. When delivery to the purchaser occurs; purchaser’s broker as holder.
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PART 4. REGISTRATION

8-401. Duty of issuer to register transfer.
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8-403. Limited duty of inquiry.
8-404. Liability and non-liability for registration.
8-405. Lost, destroyed and stolen securities.
8-406. Duty of authenticating trustee, transfer agent or registrar.
PART 1. SHORT TITLE AND GENERAL MATTERS

Section 8-101. Short Title.—This article shall be known and may be cited as Uniform Commercial Code—Investment Securities.

Sec. 8-102. Definitions and Index of Definitions.—
(1) In this article unless the context otherwise requires
(a) A “security” is an instrument which
(i) is issued in bearer or registered form; and
(ii) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and
(iii) is either one of a class or series or by its terms is divisible into a class or series of instruments; and
(iv) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.
(b) A writing which is a security is governed by this article and not by Uniform Commercial Code—Commercial Paper even though it also meets the requirements of that article. This article does not apply to money.
(c) A security is in “registered form” when it specifies a person entitled to the security or to the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.
(d) A security is in “bearer form” when it runs to bearer according to its terms and not by reason of any indorsement.
(2) A “subsequent purchaser” is a person who takes other than by original issue.
(3) A “clearing corporation” is a corporation all of the capital stock of which is held by or for a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934.
(4) A “custodian bank” is any bank or trust com-
pany which is supervised and examined by state or fed-
eral authority having supervision over banks and which
is acting as custodian for a clearing corporation.

(5) Other definitions applying to this article or to
specified parts thereof and the sections in which they
appear are:

"Adverse claim". Section 8-301.
"Bona fide purchaser". Section 8-302.
"Broker". Section 8-303.
"Guarantee of the signature". Section 8-402.
"Intermediary Bank". Section 4-105.
"Issuer". Section 8-201.
"Overissue". Section 8-104.

(6) In addition Article 1 of this chapter contains gen-
eral definitions and principles of construction and in-
terpretation applicable throughout this article.

Sec. 8-103. Issuer's Lien.—A lien upon a security in
favor of an issuer thereof is valid against a purchaser
only if the right of the issuer to such lien is noted con-
spicuously on the security.

Sec. 8-104. Effect of Overissue; "Overissue."—(1) The
provisions of this article which validate a security or com-
pel its issue or reissue do not apply to the extent that val-
idation, issue or reissue would result in overissue; but
(a) if an identical security which does not constitute
an overissue is reasonably available for purchase, the per-
son entitled to issue or validation may compel the issuer
to purchase and deliver such a security to him against sur-
render of the security, if any, which he holds; or
(b) if a security is not so available for purchase, the
person entitled to issue or validation may recover from
the issuer the price he or the last purchaser for value paid
for it with interest from the date of his demand.

(2) "Overissue" means the issue of securities in excess
of the amount which the issuer has corporate power to
issue.

Sec. 8-105. Securities Negotiable; Presumptions.—(1)
Securities governed by this article are negotiable instruments.

(2) In any action on a security

(a) unless specifically denied in the pleadings, each signature on the security or in a necessary indorsement is admitted;

(b) when the effectiveness of a signature is put in issue the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;

(c) when signatures are admitted or established production of the instrument entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; and

(d) after it is shown that a defense or defect exists the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (Section 8-202).

Sec. 8-106. Applicability.—The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer.

Sec. 8-107. Securities Deliverable; Action for Price.—

(1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or indorsed to him or in blank.

(2) When the buyer fails to pay the price as it comes due under a contract of sale the seller may recover the price

(a) of securities accepted by the buyer; and

(b) of other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.
PART 2. ISSUE—ISSUER

Sec. 8-201. "Issuer."—(1) With respect to obligations on or defenses to a security "issuer" includes a person who
(a) places or authorizes the placing of his name on a security (otherwise than as authenticating trustee, registrar, transfer agent or the like) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced by the security; or
(b) directly or indirectly creates fractional interests in his rights or property which fractional interests are evidenced by securities; or
(c) becomes responsible for or in place of any other person described as an issuer in this section.
(2) With respect to obligations on or defenses to a security a guarantor is an issuer to the extent of his guaranty whether or not his obligation is noted on the security.
(3) With respect to registration of transfer (Part 4 of this article) "issuer" means a person on whose behalf transfer books are maintained.

Sec. 8-202. Issuer's Responsibility and Defenses; Notice of Defect or Defense.—(1) Even against a purchaser for value and without notice, the terms of a security include those stated on the security and those made part of the security by reference to another instrument, indenture or document or to a constitution, statute, ordinance, rule, regulation, order or the like to the extent that the terms so referred to do not conflict with the stated terms. Such a reference does not of itself charge a purchaser for value with notice of a defect going to the validity of the security even though the security expressly states that a person accepting it admits such notice.
(2) (a) A security other than one issued by a government or governmental agency or unit even though issued with a defect going to its validity is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a viola-
tion of constitutional provisions in which case the security is valid in the hands of a subsequent purchaser for value and without notice of the defect.

(b) The rule of subparagraph (a) applies to an issuer which is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in the case of certain unauthorized signatures on issue (Section 8-205), lack of genuineness of a security is a complete defense even against a purchaser for value and without notice.

(4) All other defenses of the issuer including non-delivery and conditional delivery of the security are ineffective against a purchaser for value who has taken without notice of the particular defense.

(5) Nothing in this section shall be construed to affect the right of a party to a “when, as and if issued” or a “when distributed” contract to cancel the contract in the event of a material change in the character of the security which is the subject of the contract or in the plan or arrangement pursuant to which such security is to be issued or distributed.

Sec. 8-203. Staleness as Notice of Defects or Defenses.—

(1) After an act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer.

(a) if the act or event is one requiring the payment of money or the delivery of securities or both on presentation or surrender of the security and such funds or securities are available on the date set for payment or exchange and he takes the security more than one year after that date; and

(b) if the act or event is not covered by paragraph (a)
and he takes the security more than two years after the date set for surrender or presentation or the date on which such performance became due.

(2) A call which has been revoked is not within subsection (1).

Section 8-204. Effect of Issuer’s Restrictions on Transfer.—Unless noted conspicuously on the security a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against a person with actual knowledge of it.

Sec. 8-205. Effect of Unauthorized Signature on Issue.—An unauthorized signature placed on a security prior to or in the course of issue is ineffective except that the signature is effective in favor of a purchaser for value and without notice of the lack of authority if the signing has been done by
(a) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security or of similar securities or their immediate preparation for signing; or
(b) an employee of the issuer or of any of the foregoing entrusted with responsible handling of the security.

Sec. 8-206. Completion or Alteration of Instrument.—(1) Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect
(a) any person may complete it by filling in the blanks as authorized; and
(b) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.
(2) A complete security which has been improperly altered even though fraudulently remains enforceable but only according to its original terms.

Sec. 8-207. Rights of Issuer With Respect to Registered Owners.—(1) Prior to due presentment for registration of transfer of a security in registered form the issuer or indenture trustee may treat the registered owner as the
5 person exclusively entitled to vote, to receive notifications
6 and otherwise to exercise all the rights and powers of an
7 owner.
8 (2) Nothing in this article shall be construed to affect
9 the liability of the registered owner of a security for calls.
10 assessments or the like.

Sec. 8-208. Effect of Signature of Authenticating Trustee, Registrar or Transfer Agent.—(1) A person placing
3 his signature upon a security as authenticating trustee,
4 registrar, transfer agent or the like warrants to a pur-
5 chaser for value without notice of the particular defect
6 that
7 (a) the security is genuine; and
8 (b) his own participation in the issue of the security
9 is within his capacity and within the scope of the author-
10 ization received by him from the issuer; and
11 (c) he has reasonable grounds to believe that the se-
12 curity is in the form and within the amount the issuer is
13 authorized to issue.
14 (2) Unless otherwise agreed, a person by so placing
15 his signature does not assume responsibility for the va-
16 lidity of the security in other respects.

PART 3. PURCHASE

Sec. 8-301. Rights Acquired by Purchaser; “Adverse
2 Claim”; Title Acquired by Bona Fide Purchaser.—(1) Upon delivery of a security the purchaser acquires the
3 rights in the security which his transferor had or had ac-
4 tual authority to convey except that a purchaser who has
5 himself been a party to any fraud or illegality affecting
6 the security or who as a prior holder had notice of an ad-
7 verse claim cannot improve his position by taking from a
8 later bona fide purchaser. “Adverse claim” includes a
9 claim that a transfer was or would be wrongful or that a
10 particular adverse person is the owner of or has an inter-
11 est in the security.
12 (2) A bona fide purchaser in addition to acquiring the
13 rights of a purchaser also acquires the security free of any
14 adverse claim.
(3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

Sec. 8-302. "Bona Fide Purchaser."—A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him or in blank.

Sec. 8-303. "Broker."—"Broker" means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, or buys a security from or sells a security to a customer. Nothing in this article determines the capacity in which a person acts for purposes of any other statute or rule to which such person is subject.

Sec. 8-304. Notice to Purchaser of Adverse Claims.—

(1) A purchaser (including the broker for the seller or buyer but excluding an intermediary bank) of a security is charged with notice of adverse claims if

(a) the security whether in bearer or registered form has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

(2) The fact that the purchaser (including a broker for the seller or buyer) has notice that the security is held for a third person or is registered in the name of or indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims. If, however, the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

Sec. 8-305. Staleness as Notice of Adverse Claims.—An act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to
be presented or surrendered for redemption or exchange
does not of itself constitute any notice of adverse claims
except in the case of a purchase
(a) after one year from any date set for such present-
ment or surrender for redemption or exchange; or
(b) after six months from any date set for payment
of money against presentation or surrender of the secur-
ity if funds are available for payment on that date.

Sec. 8-306. Warranties on Presentment and Transfer.—
(1) A person who presents a security for registration of
transfer or for payment or exchange warrants to the issuer
that he is entitled to the registration, payment or ex-
change. But a purchaser for value without notice of ad-
verse claims who receives a new, reissued or re-registered
security on registration of transfer warrants only that he
has no knowledge of any unauthorized signature (Section
8-311) in a necessary indorsement.
(2) A person by transferring a security to a purchaser
for value warrants only that
(a) his transfer is effective and rightful; and
(b) the security is genuine and has not been materi-
ally altered; and
(c) he knows no fact which might impair the validity
of the security.
(3) Where a security is delivered by an intermediary
known to be entrusted with delivery of the security on
behalf of another or with collection of a draft or other
claim against such delivery, the intermediary by such de-
ivery warrants only his own good faith and authority
even though he has purchased or made advances against
the claim to be collected against the delivery.
(4) A pledgee or other holder for security who rede-
delivers the security received, or after payment and on or-
der of the debtor delivers that security to a third person
makes only the warranties of an intermediary under sub-
section (3).
(5) A broker gives to his customer and to the issuer
and a purchaser the warranties provided in this section
and has the rights and privileges of a purchaser under this
section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer.

Sec. 8-307. Effect of Delivery Without Indorsement; Right to Compel Indorsement.—Where a security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

Sec. 8-308. Indorsement, How Made; Special Indorsement; Indorser Not a Guarantor; Partial Assignment.—

(1) An indorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such person is written without more upon the back of the security.

(2) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies the person to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank indorsement into a special indorsement.

(3) “An appropriate person” in subsection (1) means

(a) the person specified by the security or by special indorsement to be entitled to the security; or

(b) where the person so specified is described as a fiduciary but is no longer serving in the described capacity,—either that person or his successor; or

(c) where the security or indorsement so specifies more than one person as fiduciaries and one or more are no longer serving in the described capacity,—the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified; or

(d) where the person so specified is an individual and is without capacity to act by virtue of death, in-
competence, infancy or otherwise,—his executor, administrator, guardian or like fiduciary; or

(e) where the security or indorsement so specifies more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign,—the survivor or survivors; or

(f) a person having power to sign under applicable law or controlling instrument; or

(g) to the extent that any of the foregoing persons may act through an agent,—his authorized agent.

(4) Unless otherwise agreed the indorser by his indorsement assumes no obligation that the security will be honored by the issuer.

(5) An indorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(6) Whether the person signing is appropriate is determined as of the date of signing and an indorsement by such a person does not become unauthorized for the purposes of this article by virtue of any subsequent change of circumstances.

(7) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his indorsement unauthorized for the purposes of this article.

Sec. 8-309. Effect of Indorsement Without Delivery.—An indorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears or if the indorsement is on a separate document until delivery of both the document and the security.

Sec. 8-310. Indorsement of Security in Bearer Form.—An indorsement of a security in bearer form may give notice of adverse claims (Section 8-304) but does not otherwise affect any right to registration the holder may possess.
Sec. 8-311. Effect of Unauthorized Indorsement.—

Unless the owner has ratified an unauthorized indorsement or is otherwise precluded from asserting its ineffectiveness

(a) he may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued or re-registered security on registration of transfer; and

(b) an issuer who registers the transfer of a security upon the unauthorized indorsement is subject to liability for improper registration (Section 8-404).

Sec. 8-312. Effect of Guaranteeing Signature or Indorsement.—(1) Any person guaranteeing a signature of an indorser of a security warrants that at the time of signing

(a) the signature was genuine; and

(b) the signer was an appropriate person to indorse (Section 8-308); and

(c) the signer had legal capacity to sign.

But the guarantor does not otherwise warrant the rightfulness of the particular transfer.

(2) Any person may guarantee an indorsement of a security and by so doing warrants not only the signature (subsection 1) but also the rightfulness of the particular transfer in all respects. But no issuer may require a guarantee of indorsement as a condition to registration of transfer.

(3) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties.

Sec. 8-313. When Delivery to the Purchaser Occurs; Purchaser’s Broker as Holder.—(1) Delivery to a purchaser occurs when

(a) he or a person designated by him acquires possession of a security; or

(b) his broker acquires possession of a security specially indorsed to or issued in the name of the purchaser; or
his broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser; or

(d) with respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser; or

(e) appropriate entries on the books of a clearing corporation are made under Section 8-320.

(2) The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in subparagraphs (b), (c) and (e) of subsection (1). Where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser. However, as between the broker and the purchaser the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received.

Sec. 8-314. Duty to Deliver, When Completed.—(1) Unless otherwise agreed where a sale of a security is made on an exchange or otherwise through brokers

(a) the selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker or if requested causes an acknowledgment to be made to the selling broker that it is held for him; and

(b) the selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a
18 security under a contract of purchase is not fulfilled until
19 he places the security in form to be negotiated by the
20 purchaser in the possession of the purchaser or of a person
21 designated by him or at the purchaser's request causes
22 an acknowledgment to be made to the purchaser that it is
23 held for him. Unless made on an exchange a sale to a
24 broker purchasing for his own account is within this sub-
25 section and not within subsection (1).

Sec. 8-315. Action Against Purchaser Based Upon
2 Wrongful Transfer.—(1) Any person against whom the
3 transfer of a security is wrongful for any reason, includ-
4 ing his incapacity, may against anyone except a bona fide
5 purchaser reclaim possession of the security or obtain
6 possession of any new security evidencing all or part of
7 the same rights or have damages.
8 (2) If the transfer is wrongful because of an unau-
9 thorized indorsement, the owner may also reclaim or ob-
10 tain possession of the security or new security even from
11 a bona fide purchaser if the ineffectiveness of the pur-
12 ported indorsement can be asserted against him under the
13 provisions of this article on unauthorized indorsements
14 (Section 8-311).
15 (3) The right to obtain or reclaim possession of a se-
16 curity may be specifically enforced and its transfer en-
17 joined and the security impounded pending the litigation.

Sec. 8-316. Purchaser's Right to Requisites for Registra-
2 tion of Transfer on Books.—Unless otherwise agreed the
3 transferor must on due demand supply his purchaser with
4 any proof of his authority to transfer or with any other
5 requisite which may be necessary to obtain registration of
6 the transfer of the security but if the transfer is not for
7 value a transferor need not do so unless the purchaser
8 furnishes the necessary expenses. Failure to comply with
9 a demand made within a reasonable time gives the pur-
10 chaser the right to reject or rescind the transfer.

Sec. 8-317. Attachment or Levy Upon Security.—(1) No
2 attachment or levy upon a security or any share or other
3 interest evidenced thereby which is outstanding shall be
4 valid until the security is actually seized by the officer
5 making the attachment or levy but a security which has
been surrendered to the issuer may be attached or levied upon at the source.

(2) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

Sec. 8-318. No Conversion by Good Faith Delivery.—An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right to dispose of them.

Sec. 8-319. Statute of Frauds.—A contract for the sale of securities is not enforceable by way of action or defense unless

(a) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price; or

(b) delivery of the security has been accepted or payment has been made but the contract is enforceable under this provision only to the extent of such delivery or payment; or

(c) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under paragraph (a) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within ten days after its receipt; or

(d) the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.
Sec. 8-320. Transfer or Pledge within a Central Depository System.—(1) If a security
(a) is in the custody of a clearing corporation or of a custodian bank or a nominee of either subject to the instructions of the clearing corporation; and
(b) is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and
(c) is shown on the account of a transferor or pledgor on the books of the clearing corporation;
then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.
(2) Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.
(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly indorsed in blank (Section 8-301) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (Sections 9-304 and 9-305). A transferee or pledgee under this section is a holder.
(4) A transfer or pledge under this section does not constitute a registration of transfer under Part 4 of this article.
(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appro-
part 4. registration

sec. 8-401. duty of issuer to register transfer.—(1) Where a security in registered form is presented to the issuer with a request to register transfer, the issuer is under a duty to register the transfer as requested if
(a) the security is indorsed by the appropriate person or persons (section 8-308); and
(b) reasonable assurance is given that those indorsements are genuine and effective (section 8-402); and
(c) the issuer has no duty to inquire into adverse claims or has discharged any such duty (section 8-403); and
(d) any applicable law relating to the collection of taxes has been complied with; and
(e) the transfer is in fact rightful or is to a bona fide purchaser.

(2) Where an issuer is under a duty to register a transfer of a security the issuer is also liable to the person presenting it for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer.

sec. 8-402. assurance that indorsements are effective.—(1) The issuer may require the following assurance that each necessary indorsement (section 8-308) is genuine and effective
(a) in all cases, a guarantee of the signature (subsection (1) of section 8-312) of the person indorsing; and
(b) where the indorsement is by an agent, appropriate assurance of authority to sign;
(c) where the indorsement is by a fiduciary, appropriate evidence of appointment or incumbency;
(d) where there is more than one fiduciary, reasonable assurance that all who are required to sign have done so;
(e) where the indorsement is by a person not cov-
15 ered by any of the foregoing, assurance appropriate to
16 the case corresponding as nearly as may be to the fore-
17 going.
18 (2) A "guarantee of the signature" in subsection
19 (1) means a guarantee signed by or on behalf of a per-
20 son reasonably believed by the issuer to be responsible.
21 The issuer may adopt standards with respect to respon-
22 sibility provided such standards are not manifestly
23 unreasonable.
24 (3) "Appropriate evidence of appointment or incum-
25 bency" in subsection (1) means
26 (a) in the case of a fiduciary appointed or qualified
27 by a court, a certificate issued by or under the direction
28 or supervision of that court or an officer thereof and
29 dated within sixty days before the date of presentation
30 for transfer; or
31 (b) in any other case, a copy of a document showing
32 the appointment or a certificate issued by or on behalf
33 of a person reasonably believed by the issuer to be re-
34 sponsible or, in the absence of such a document or
35 certificate, other evidence reasonably deemed by the
36 issuer to be appropriate. The issuer may adopt stand-
37 ards with respect to such evidence provided such stand-
38 ards are not manifestly unreasonable. The issuer is not
39 charged with notice of the contents of any document
40 obtained pursuant to this paragraph (b) except to the
41 extent that the contents relate directly to the appoint-
42 ment or incumbency.
43 (4) The issuer may elect to require reasonable as-
44 surance beyond that specified in this section but if it
45 does so and for a purpose other than that specified in
46 subsection 3 (b) both requires and obtains a copy of a
47 will, trust, indenture, articles of co-partnership, by-laws
48 or other controlling instrument it is charged with notice
49 of all matters contained therein affecting the transfer.

Sec. 8-403. Limited Duty of Inquiry.—(1) An issuer
2 to whom a security is presented for registration is under
3 a duty to inquire into adverse claims if
4 (a) a written notification of an adverse claim is re-
5 ceived at a time and in a manner which affords the issuer
a reasonable opportunity to act on it prior to the issuance of a new, reissued or re-registered security and the notification identifies the claimant, the registered owner and the issue of which the security is a part and provides an address for communications directed to the claimant; or

(b) the issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of Section 8-402.

(2) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or if there be no such address at his residence or regular place of business that the security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within thirty days from the date of mailing the notification, either

(a) an appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or

(b) an indemnity bond sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar or other agent of the issuer involved, from any loss which it or they may suffer by complying with the adverse claim is filed with the issuer.

(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of Section 8-402 or receives notification of an adverse claim under subsection (1) of this section, where a security presented for registration is indorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular

(a) an issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no
longer acting as such with respect to the particular security;

(b) an issuer registering transfer on an indorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the indorsement of a fiduciary to the fiduciary himself or to his nominee.

Sec. 8-404. Liability and Non-Liability for Registration.—(1) Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security if

(a) there were on or with the security the necessary indorsements (Section 8-308); and

(b) the issuer had no duty to inquire into adverse claims or has discharged any such duty (Section 8-403).

(2) Where an issuer has registered a transfer of a security to a person not entitled to it the issuer on demand must deliver a like security to the true owner unless

(a) the registration was pursuant to subsection (1); or

(b) the owner is precluded from asserting any claim for registering the transfer under subsection (1) of the following section; or

(c) such delivery would result in overissue, in which case the issuer's liability is governed by Section 8-104.

Sec. 8-405. Lost, Destroyed and Stolen Securities.—(1) Where a security has been lost, apparently destroyed or wrongfully taken and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the securi-
ity before receiving such a notification, the owner is pre-
cluded from asserting against the issuer any claim for
registering the transfer under the preceding section or any
claim to a new security under this section.

(2) Where the owner of a security claims that the se-
curity has been lost, destroyed or wrongfully taken, the is-
suer must issue a new security in place of the original
security if the owner

(a) so requests before the issuer has notice that the
security has been acquired by a bona fide purchaser; and

(b) files with the issuer a sufficient indemnity bond; and

(c) satisfies any other reasonable requirements im-
posed by the issuer.

(3) If, after the issue of the new security, a bona fide
purchaser of the original security presents it for registra-
tion of transfer, the issuer must register the transfer un-
less registration would result in overissue, in which event
the issuer’s liability is governed by Section 8-104. In ad-
dition to any rights on the indemnity bond, the issuer
may recover the new security from the person to whom it
was issued or any person taking under him except a bona
fide purchaser.

Sec. 8-406. Duty of Authenticating Trustee, Transfer
Agent or Registrar.—(1) Where a person acts as authenti-
cating trustee, transfer agent, registrar, or other agent
for an issuer in the registration of transfers of its secur-
ities or in the issue of new securities or in the cancel-
lation of surrendered securities

(a) he is under a duty to the issuer to exercise good
faith and due diligence in performing his functions; and

(b) he has with regard to the particular functions
he performs the same obligation to the holder or owner
of the security and has the same rights and privileges
as the issuer has in regard to those functions.

(2) Notice to an authenticating trustee, transfer
agent, registrar or other such agent is notice to the issuer
with respect to the functions performed by the agent.

PART 1. SHORT TITLE, APPLICABILITY AND DEFINITIONS

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PART 1. SHORT TITLE, APPLICABILITY AND DEFINITIONS

Section 9-101. Short Title.—This article shall be known and may be cited as Uniform Commercial Code—Secured Transactions.

Sec. 9-102. Policy and Scope of Article.—(1) Except as otherwise provided in Section 9-103 on multiple state transactions and in Section 9-104 on excluded transactions, this article applies so far as concerns any personal property and fixtures within the jurisdiction of this state
(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, accounts or contract rights; and also
(b) to any sale of accounts, contract rights or chattel paper.
(2) This article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This article does not apply to statutory liens except as provided in Section 9-310.
(3) The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

Sec. 9-103. Accounts, Contract Rights, General Intangibles and Equipment Relating to Another Jurisdiction; and Incoming Goods Already Subject to a Security Interest.—(1) If the office where the assignor of accounts or contract rights keeps his records concerning them is in this state, the validity and perfection of a security interest therein and the possibility and effect of proper filing is governed by this article; otherwise by the law (including the conflict of laws rules) of the jurisdiction where such office is located.

(2) If the chief place of business of a debtor is in this state, this article governs the validity and perfection of a security interest and the possibility and effect of proper filing with regard to general intangibles or with regard to goods of a type which are normally used in more than one jurisdiction (such as automotive equipment, rolling stock, airplanes, road building equipment, commercial harvesting equipment, construction machinery and the like) if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others. Otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located shall govern. If the chief place of business is located in a jurisdiction which does not provide for perfection of the security interest by filing or recording in that jurisdiction, then the security interest may be perfected by filing in this state.

(3) If personal property other than that governed by subsections (1) and (2) is already subject to a security interest when it is brought into this state, the validity of the security interest in this state is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached. However, if the parties to the transaction understood at the time that the security interest
attached that the property would be kept in this state and it was brought into this state within thirty days after the security interest attached for purposes other than transportation through this state, then the validity of the security interest in this state is to be determined by the law of this state. If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, the security interest continues perfected in this state for four months and also thereafter if within the four month period it is perfected in this state. The security interest may also be perfected in this state after the expiration of the four month period; in such case perfection dates from the time of perfection in this state. If the security interest was not perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, it may be perfected in this state; in such case perfection dates from the time of perfection in this state.

(4) Notwithstanding subsections (2) and (3), if personal property is covered by a certificate of title issued under a statute of this state or any other jurisdiction which requires indication on a certificate of title of any security interest in the property as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate.

Sec. 9-104. Transactions Excluded From Article.—This article does not apply

(a) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(b) to a landlord's lien; or

(c) to a lien given by statute or other rule of law for services or materials except as provided in Section 9-310 on priority of such liens; or

(d) to a transfer of a claim for wages, salary or other compensation of an employee; or
14 (e) to an equipment trust covering railway rolling
15 stock; or
16 (f) to a sale of accounts, contract rights or chattel
17 paper as part of a sale of the business out of which they
18 arose, or an assignment of accounts, contract rights or
19 chattel paper which is for the purpose of collection only,
20 or a transfer of a contract right to an assignee who is
21 also to do the performance under the contract; or
22 (g) to a transfer of an interest or claim in or under
23 any policy of insurance; or
24 (h) to a right represented by a judgment; or
25 (i) to any right of set-off; or
26 (j) except to the extent that provision is made for
27 fixtures in Section 9-313, to the creation or transfer of
28 an interest in or lien on real estate, including a lease or
29 rents thereunder; or
30 (k) to a transfer in whole or in part of any of the
31 following: any claim arising out of tort; any deposit,
32 savings, passbook or like account maintained with a
33 bank, savings and loan association, credit union or like
34 organization.

Sec. 9-105. Definitions and Index of Definitions.—(1) In
2 this article unless the context otherwise requires:
3 (a) “Account debtor” means the person who is obli-
4 gated on an account, chattel paper, contract right or gen-
5 eral intangible;
6 (b) “Chattel paper” means a writing or writings which
7 evidence both a monetary obligation and a security inter-
8 est in or a lease of specific goods. When a transaction is
9 evidenced both by such a security agreement or a lease
10 and by an instrument or a series of instruments, the group
11 of writings taken together constitutes chattel paper;
12 (c) “Collateral” means the property subject to a secur-
13 ity interest, and includes accounts, contract rights and
14 chattel paper which have been sold;
15 (d) “Debtor” means the person who owes payment or
16 other performance of the obligation secured, whether or
17 not he owns or has rights in the collateral, and includes
18 the seller of accounts, contract rights or chattel paper.
Where the debtor and the owner of the collateral are not
the same person, the term "debtor" means the owner of
the collateral in any provision of the article dealing with
the collateral, the obligor in any provision dealing with
the obligation, and may include both where the context
so requires;

(e) "Document" means document of title as defined in
the general definitions of Article 1 (Section 1-201);

(f) "Goods" includes all things which are movable at the
time the security interest attaches or which are fixtures
(Section 9-313), but does not include money, documents,
instruments, accounts, chattel paper, general intangibles,
contract rights and other things in action. "Goods" also
include the unborn young of animals and growing crops;

(g) "Instrument" means a negotiable instrument (de-
defined in Section 3-104), or a security (defined in Section
8-102) or any other writing which evidences a right to the
payment of money and is not itself a security agreement
or lease and is of a type which is in ordinary course of
business transferred by delivery with any necessary in-
dorsement or assignment;

(h) "Security agreement" means an agreement which
creates or provides for a security interest;

(i) "Secured party" means a lender, seller or other
person in whose favor there is a security interest, includ-
ing a person to whom accounts, contract rights or chattel
paper have been sold. When the holders of obligations
issued under an indenture of trust, equipment trust agree-
ment or the like are represented by a trustee or other per-
son, the representative is the secured party.

(2) Other definitions applying to this article and the
sections in which they appear are:

"Account". Section 9-106.
"Consumer goods". Section 9-109 (1).
"Contract right". Section 9-106.
"Equipment". Section 9-109 (2).
"Farm products". Section 9-109 (3).
"General intangibles". Section 9-106.
"Inventory". Section 9-109 (4).
Sec. 9-106. Definitions: "Account"; "Contract Right";

"General Intangibles".—“Account” means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper. “Contract right” means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper. “General intangibles” means any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents and instruments.

Sec. 9-107. Definitions: “Purchase Money Security Inter-
test”.—A security interest is a “purchase money security interest” to the extent that it is

(a) taken or retained by the seller of the collateral to secure all or part of its price; or

(b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

Sec. 9-108. When After-Acquired Collateral Not Secu-
ritv for Antecedent Debt.—Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall
be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.

Sec. 9-109. Classification of Goods; "Consumer Goods"; "Equipment"; "Farm Products"; "Inventory".—Goods are

1. “consumer goods” if they are used or bought for use primarily for personal, family or household purposes;
2. “equipment” if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;
3. “farm products” if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;
4. “inventory” if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

Sec. 9-110. Sufficiency of Description.—For the purposes of this article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described.

Sec. 9-111. Applicability of Bulk Transfer Laws.—The creation of a security interest is not a bulk transfer under Article 6 (see Section 6-103).

Sec. 9-112. Where Collateral Is Not Owned by Debtor.—
2 Unless otherwise agreed, when a secured party knows
3 that collateral is owned by a person who is not the debt-
4 or, the owner of the collateral is entitled to receive from
5 the secured party any surplus under Section 9-502 (2)
6 or under Section 9-504 (1), and is not liable for the debt
7 or for any deficiency after resale, and he has the same
8 right as the debtor
9 (a) to receive statements under Section 9-208;
10 (b) to receive notice of and to object to a secured
11 party's proposal to retain the collateral in satisfaction of
12 the indebtedness under Section 9-505;
13 (c) to redeem the collateral under Section 9-506;
14 (d) to obtain injunctive or other relief under Sec-
15 tion 9-507 (1); and
16 (e) to recover losses caused to him under Section
17 9-208 (2).

Sec. 9-113. Security Interests Arising Under Article on
2 Sales.—A security interest arising solely under the article
3 on Sales (Article 2) is subject to the provisions of this
4 article except that to the extent that and so long as the
5 debtor does not have or does not lawfully obtain pos-
6 session of the goods
7 (a) no security agreement is necessary to make the
8 security interest enforceable; and
9 (b) no filing is required to perfect the security in-
10 terest; and
11 (c) the rights of the secured party on default by
12 the debtor are governed by the article on Sales (Article
13 2).

PART 2. VALIDITY OF SECURITY AGREEMENT AND
RIGHTS OF PARTIES THERETO

Sec. 9-201. General Validity of Security Agreement.—
2 Except as otherwise provided by this chapter a security
3 agreement is effective according to its terms between the
4 parties, against purchasers of the collateral and against
5 creditors. Nothing in this article validates any charge
6 or practice illegal under any statute or regulation there-
7 under governing usury, small loans, retail installment
sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

Sec. 9-202. Title to Collateral Immaterial.—Each provision of this article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

Sec. 9-203. Enforceability of Security Interest; Proceeds, Formal Requisites.—(1) Subject to the provisions of Section 4-208 on the security interest of a collecting bank and Section 9-113 on a security interest arising under the article on sales, a security interest is not enforceable against the debtor or third parties unless
(a) the collateral is in the possession of the secured party; or
(b) the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops or oil, gas or minerals to be extracted or timber to be cut, a description of the land concerned. In describing collateral, the word “proceeds” is sufficient without further description to cover proceeds of any character.
(2) A transaction may be subject to this article and also to Article 7A of Chapter 47 relating to small loans and in case of conflict between the provisions of this article and said Article 7A or any other such statute, the provisions of said Article 7A or such other statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

Sec. 9-204. When Security Interest Attaches; After-Acquired Property; Future Advances.—(1) A security interest cannot attach until there is agreement (subsection (3) of Section 1-201) that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place unless explicit agreement postpones the time of attaching.
(2) For the purpose of this section the debtor has no rights
(a) in crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived;
(b) in fish until caught, in oil, gas or minerals until they are extracted, in timber until it is cut;
(c) in a contract right until the contract has been made;
(d) in an account until it comes into existence.
(3) Except as provided in subsection (4) a security agreement may provide that collateral, whenever acquired, shall secure all obligations covered by the security agreement.
(4) No security interest attaches under an after-acquired property clause
   (a) to crops which become such more than one year after the security agreement is executed except that a security interest in crops which is given in conjunction with a lease or a land purchase or improvement transaction evidenced by a contract, mortgage or deed of trust may if so agreed attach to crops to be grown on the land concerned during the period of such real estate transaction;
   (b) to consumer goods other than accessions (Section 9-314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.
(5) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment.

Sec. 9-205. Use or Disposition of Collateral without Accounting Permissible.—A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts, contract rights or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require
the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

Sec. 9-206. Agreement Not to Assert Defenses Against Assignee; Modification of Sales Warranties Where Security Agreement Exists.—(1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the article on Commercial Paper (Article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods the article on Sales (Article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties.

Sec. 9-207. Rights and Duties When Collateral Is in Secured Party's Possession.—(1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession

(a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the
debtor to the extent of any deficiency in any effective ins-
urance coverage;
(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;
(d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;
(e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.
(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.
(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

Sec. 9-208. Request for Statement of Account or List of Collateral.—(1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.
(2) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reason-
able excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor has prop-
erly included in his request a good faith statement of
the obligation or a list of the collateral or both the se-
cured party may claim a security interest only as shown
in the statement against persons misled by his failure
to comply. If he no longer has an interest in the obliga-
tion or collateral at the time the request is received he
must disclose the name and address of any successor in
interest known to him and he is liable for any loss caused
to the debtor as a result of failure to disclose. A suc-
cessor in interest is not subject to this section until a
request is received by him.

(3) A debtor is entitled to such a statement once
every six months without charge. The secured party
may require payment of a charge not exceeding ten dol-
lars for each additional statement furnished.

PART 3. RIGHTS OF THIRD PARTIES; PERFECTED AND
UNPERFECTED SECURITY INTERESTS; RULES OF
PRIORITY

Sec. 9-301. Persons Who Take Priority Over Unper-
fected Security Interests; “Lien Creditor”.—(1) Except as
otherwise provided in subsection (2), an unperfected
security interest is subordinate to the rights of
(a) persons entitled to priority under Section 9-312;
(b) a person who becomes a lien creditor without
knowledge of the security interest and before it is per-
fected;
(c) in the case of goods, instruments, documents,
and chattel paper, a person who is not a secured party
and who is a transferee in bulk or other buyer not in
ordinary course of business to the extent that he gives
value and receives delivery of the collateral without
knowledge of the security interest and before it is per-
fected;
(d) in the case of accounts, contract rights, and gen-
eral intangibles, a person who is not a secured party
and who is a transferee to the extent that he gives value
without knowledge of the security interest and before
it is perfected.

(2) If the secured party files with respect to a pur-
chase money security interest before or within ten days
after the collateral comes into possession of the debtor,
he takes priority over the rights of a transforee in bulk
or of a lien creditor which arise between the time the
security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has ac-
quired a lien on the property involved by attachment,
levy or the like and includes an assignee for benefit of
creditors from the time of assignment, and a trustee in
bankruptcy from the date of the filing of the petition
or a receiver in equity from the time of appointment.
Unless all the creditors represented had knowledge of
the security interest such a representative of creditors
is a lien creditor without knowledge even though he
personally has knowledge of the security interest.

Sec. 9-302. When Filing Is Required to Perfect Security
Interest; Security Interests to Which Filing Provisions of
This Article Do Not Apply.—(1) A financing statement
must be filed to perfect all security interests except the
following:

(a) a security interest in collateral in possession of
the secured party under Section 9-305;
(b) a security interest temporarily perfected in in-
struments or documents without delivery under Section
9-304 or in proceeds for a ten day period under Section
9-306;
(c) a purchase money security interest in farm
equipment having a purchase price not in excess of $2500;
but filing is required for a fixture under Section 9-313
or for a motor vehicle required to be licensed;
(d) a purchase money security interest in consumer
goods; but filing is required for a fixture under Section
9-313 or for a motor vehicle required to be licensed;
(e) an assignment of accounts or contract rights
which does not alone or in conjunction with other assign-
ments to the same assignee transfer a significant part
of the outstanding accounts or contract rights of the
assignor;
(f) a security interest of a collecting bank (Section
25 4-208) or arising under the article on sales (see Section 26 9-113) or covered in subsection (3) of this section.
27 (2) If a secured party assigns a perfected security 28 interest, no filing under this article is required in order 29 to continue the perfected status of the security interest 30 against creditors of and transferees from the original 31 debtor.
32 (3) The filing provisions of this article do not apply 33 to a security interest in property subject to a statute 34 (a) of the United States which provides for a national 35 registration or filing of all security interests in such 36 property; or 37 (b) of this state which provides for central filing of, 38 or which requires indication on a certificate of title of, 39 such security interests in such property.
40 (4) A security interest in property covered by a 41 statute described in subsection (3) can be perfected only 42 by registration or filing under that statute or by indication 43 of the security interest on a certificate of title or a 44 duplicate thereof by a public official.

Sec. 9-303. When Security Interest Is Perfected; Continuity of Perfection.—(1) A security interest is perfected 2 when it has attached and when all of the applicable steps 3 required for perfection have been taken. Such steps are 4 specified in Sections 9-302, 9-304, 9-305 and 9-306. If such 6 steps are taken before the security interest attaches, it is 7 perfected at the time when it attaches.
8 (2) If a security interest is originally perfected in any 9 way permitted under this article and is subsequently per- 10 fected in some other way under this article, without an 11 intermediate period when it was unperfected, the security 12 interest shall be deemed to be perfected continuously for 13 the purposes of this article.

Sec. 9-304. Perfection of Security Interest in Instruments, Documents, and Goods Covered by Documents; Perfection by Permissive Filing; Temporary Perfection without Filing or Transfer of Possession.—(1) A security 5 interest in chattel paper or negotiable documents may be 6 perfected by filing. A security interest in instruments
(other than instruments which constitute part of chattel paper) can be perfected only by the secured party’s taking possession, except as provided in subsections (4) and (5).

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee’s receipt of notification of the secured party’s interest or by filing as to the goods.

(4) A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange; or

(b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21 day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this article.

Sec. 9-305. When Possession by Secured Party Perfects Security Interest without Filing.—A security interest in
letters of credit and advices of credit (subsection (2)
(a) of Section 5-116), goods, instruments, negotiable
documents or chattel paper may be perfected by the se-
cured party’s taking possession of the collateral. If such
collateral other than goods covered by a negotiable doc-
ument is held by a bailee, the secured party is deemed
to have possession from the time the bailee receives
notification of the secured party’s interest. A security
interest is perfected by possession from the time pos-
session is taken without relation back and continues only
so long as possession is retained, unless otherwise speci-
ified in this article. The security interest may be other-
wise perfected as provided in this article before or after
the period of possession by the secured party.

Sec. 9-306. “Proceeds”; Secured Party’s Rights on Dis-
position of Collateral.—(1) “Proceeds” includes whatever
is received when collateral or proceeds is sold, exchanged,
collected or otherwise disposed of. The term also in-
cludes the account arising when the right to payment is
earned under a contract arising right. Money, checks and the
like are “cash proceeds”. All other proceeds are “non-
cash proceeds”.

(2) Except where this article otherwise provides,
a security interest continues in collateral notwithstand-
ing sale, exchange or other disposition thereof by the
debtor unless his action was authorized by the secured
party in the security agreement or otherwise, and also
continues in any identifiable proceeds including collec-
tions received by the debtor.

(3) The security interest in proceeds is a continuous-
ly perfected security interest if the interest in the origi-
nal collateral was perfected but it ceases to be a perfected
security interest and becomes unperfected ten days after
receipt of the proceeds by the debtor unless
(a) a filed financing statement covering the original
collateral also covers proceeds; or
(b) the security interest in the proceeds is perfected
before the expiration of the ten day period.

(4) In the event of insolvency proceedings instituted
by or against a debtor, a secured party with a perfected
security interest in proceeds has a perfected security interest
(a) in identifiable non-cash proceeds;
(b) in identifiable cash proceeds in the form of money which is not commingled with other money or deposited in a bank account prior to the insolvency proceedings;
(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a bank account prior to the insolvency proceedings; and
(d) in all cash and bank accounts of the debtor, if other cash proceeds have been commingled or deposited in a bank account, but the perfected security interest under this paragraph (d) is
(i) subject to any right of set-off; and
(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings and commingled or deposited in a bank account prior to the insolvency proceedings less the amount of cash proceeds received by the debtor and paid over to the secured party during the ten day period.
(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:
(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.
(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the
transferee of the chattel paper was entitled to priority
under Section 9-308.

(c) An unpaid transferee of the account has a security
interest in the goods against the transferor. Such secu-

rity interest is subordinate to a security interest asserted
under paragraph (a).

(d) A security interest of an unpaid transferee as-

serted under paragraph (b) or (c) must be perfected
for protection against creditors of the transferor and
purchasers of the returned or repossessed goods.

Sec. 9-307. Protection of Buyers of Goods.—(1) A buyer
in ordinary course of business (subsection (9) of Section
1-201) other than a person buying farm products from a
person engaged in farming operations takes free of a se-
curity interest created by his seller even though the secu-

rity interest is perfected and even though the buyer
knows of its existence.

(2) In the case of consumer goods and in the case of
farm equipment having an original purchase price not in
excess of $2500 (other than fixtures, see Section 9-313), a
buyer takes free of a security interest even though per-

fected if he buys without knowledge of the security in-

terest, for value and for his own personal, family or house-

hold purposes or his own farming operations unless prior
to the purchase the secured party has filed a financing
statement covering such goods.

Sec. 9-308. Purchase of Chattel Paper and Non-Nego-
tiable Instruments.—A purchaser of chattel paper or a
non-negotiable instrument who gives new value and takes
possession of it in the ordinary course of his business and
without knowledge that the specific paper or instrument
is subject to a security interest has priority over a secu-

rity interest which is perfected under Section 9-304 (per-

missive filing and temporary perfection). A purchaser
of chattel paper who gives new value and takes possession
of it in the ordinary course of his business has priority
over a security interest in chattel paper which is claimed
merely as proceeds of inventory subject to a security in-

terest (Section 9-306), even though he knows that the
specific paper is subject to the security interest.
Sec. 9-309. Protection of Purchasers of Instruments and Documents.—Nothing in this article limits the rights of a holder in due course of a negotiable instrument (Section 3-302) or a holder to whom a negotiable document of title has been duly negotiated (Section 7-501) or a bona fide purchaser of a security (Section 8-301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this article does not constitute notice of the security interest to such holders or purchasers.

Sec. 9-310. Priority of Certain Liens Arising by Operation of Law.—When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

Sec. 9-311. Alienability of Debtor's Rights: Judicial Process.—The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default.

Sec. 9-312. Priorities Among Conflicting Security Interests in the Same Collateral.—(1) The rules of priority stated in the following sections shall govern where applicable: Section 4-208 with respect to the security interest of collecting banks in items being collected, accompanying documents and proceeds; Section 9-301 on certain priorities; Section 9-304 on goods covered by documents; Section 9-306 on proceeds and repossessions; Section 9-307 on buyers of goods; Section 9-308 on possessor against non-possessory interests in chattel paper or non-negotiable instruments; Section 9-309 on security interests in negotiable instruments, documents or securities; Section 9-310 on priorities between perfected security interests and liens by operation of law; Section 9-313 on security interests in fixtures as against interests in real estate; Section 9-
A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

A purchase money security interest in inventory collateral has priority over a conflicting security interest in the same collateral if

(a) the purchase money security interest is perfected at the time the debtor receives possession of the collateral; and

(b) any secured party whose security interest is known to the holder of the purchase money security interest or who, prior to the date of the filing made by the holder of the purchase money security interest, had filed a financing statement covering the same items or type of inventory, has received notification of the purchase money security interest before the debtor receives possession of the collateral covered by the purchase money security interest; and

(c) such notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.

In all cases not governed by other rules stated in
this section (including cases of purchase money security
interests which do not qualify for the special priorities set
forth in subsections (3) and (4) of this section), priority
between conflicting security interests in the same collat-
eral shall be determined as follows:

(a) in the order of filing if both are perfected by filing,
regardless of which security interest attached first under
Section 9-204 (1) and whether it attached before or after
filing;

(b) in the order of perfection unless both are per-
fected by filing, regardless of which security interest at-
tached first under Section 9-204 (1) and, in the case of a
filed security interest, whether it attached before or after
filing; and

(c) in the order of attachment under Section 9-204 (1)
so long as neither is perfected.

(6) For the purpose of the priority rules of the im-
m ediately preceding subsection, a continuously perfected
security interest shall be treated at all times as if per-
fected by filing if it was originally so perfected and it shall
be treated at all times as if perfected otherwise than by
filing if it was originally perfected otherwise than by fil-
ing.

Sec. 9-313. Priority of Security Interests in Fixtures.—
(1) The rules of this section do not apply to goods incor-
porated into a structure in the manner of lumber, bricks,
tile, cement, glass, metal work and the like and no secu-

rit y interest in them exists under this article unless the
structure remains personal property under applicable law.
The law of this state other than this chapter determines
whether and when other goods become fixtures. This
article does not prevent creation of an encumbrance upon
fixtures or real estate pursuant to the law applicable to
real estate.

(2) A security interest which attaches to goods before
they become fixtures takes priority as to the goods over
the claims of all persons who have an interest in the real
estate except as stated in subsection (4).

(3) A security interest which attaches to goods after
they become fixtures is valid against all persons subse-
18 subsequently acquiring interests in the real estate except as
19 stated in subsection (4) but is invalid against any person
20 with an interest in the real estate at the time the security
interest attaches to the goods who has not in writing con-
21 sented to the security interest or disclaimed an interest in
22 the goods as fixtures.
24 (4) The security interests described in subsections (2)
25 and (3) do not take priority over
26 (a) a subsequent purchaser for value of any interest
27 in the real estate; or
28 (b) a creditor with a lien on the real estate subse-
29 quently obtained by judicial proceedings; or
30 (c) a creditor with a prior encumbrance of record on
31 the real estate to the extent that he makes subsequent
32 advances
33 if the subsequent purchase is made, the lien by judicial
34 proceedings is obtained, or the subsequent advance under
35 the prior encumbrance is made or contracted for without
36 knowledge of the security interest and before it is per-
37 fected. A purchaser of the real estate at a foreclosure
38 sale other than an encumbrancer purchasing at his own
39 foreclosure sale is a subsequent purchaser within this
40 section.
41 (5) When under subsections (2) or (3) and (4) a se-
42 cured party has priority over the claims of all persons who
43 have interests in the real estate, he may, on default, sub-
44 ject to the provisions of Part 5, remove his collateral from
45 the real estate but he must reimburse any encumbrancer
46 or owner of the real estate who is not the debtor and who
47 has not otherwise agreed for the cost of repair of any
48 physical injury, but not for any diminution in value of the
49 real estate caused by the absence of the goods removed or
50 by any necessity for replacing them. A person entitled
51 to reimbursement may refuse permission to remove until
52 the secured party gives adequate security for the per-
53 formance of this obligation.

Sec. 9-314. Accessions.—(1) A security interest in goods
2 which attaches before they are installed in or affixed to
3 other goods takes priority as to the goods installed or af-
4 fixed (called in this section “accessions”) over the claims
of all persons to the whole except as stated in subsection (3) and subject to Section 9-315 (1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over

(a) a subsequent purchaser for value of any interest in the whole; or

(b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsections (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of Part 5 remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.
Sec. 9-315. Priority When Goods Are Commingled or Processed.—(1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if
(a) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or
(b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.
In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under Section 9-314.
(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

Sec. 9-316. Priority Subject to Subordination.—Nothing in this article prevents subordination by agreement by any person entitled to priority.

Sec. 9-317. Secured Party Not Obligated on Contract of Debtor.—The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor’s acts or omissions.

Sec. 9-318. Defenses Against Assignee; Modification of Contract After Notification of Assignment; Term Prohibiting Assignment Ineffective; Identification and Proof of Assignment.—(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in Section 9-206 the rights of an assignee are subject to
(a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and
(b) any other defense or claim of the account debtor
against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment under an assigned contract right has not already become an account, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the account has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor which prohibits assignment of an account or contract right to which they are parties is ineffective.

PART 4. FILING

Sec. 9-401. Place of Filing; Erroneous Filing; Removal of Collateral.—(1) The proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is equipment used in farming operations, or farm products, or accounts, contract rights or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the county clerk in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the county clerk in the county where the goods are kept, and in addition when the collateral is crops in the office of the county clerk in the county where the land on which the crops are growing or to be grown is located;
(b) when the collateral is goods which at the time
the security interest attaches are or are to become fix-
tures, then in the office where a mortgage on the real
estate concerned would be filed or recorded;
(c) in all other cases, in the office of the secretary
of state and in addition, if the debtor has a place of
business in only one county of this state, also in the
office of the county clerk of such county, or, if the debtor
has no place of business in this state, but resides in the
state, also in the office of the county clerk of the county
in which he resides.

(2) A filing which is made in good faith in an im-
proper place or not in all of the places required by this
section is nevertheless effective with regard to any col-
lateral as to which the filing complied with the require-
ments of this article and is also effective with regard to
collateral covered by the financing statement against
any person who has knowledge of the contents of such
financing statement.

(3) A filing which is made in the proper county con-
tinues effective for four months after a change to an-
other county of the debtor's residence or place of busi-
ness or the location of the collateral, whichever con-
trolled the original filing. It becomes ineffective there-
after unless a copy of the financing statement signed by
the secured party is filed in the new county within said
period. The security interest may also be perfected in
the new county after the expiration of the four-month
period; in such case perfection dates from the time of
perfection in the new county. A change in the use of
the collateral does not impair the effectiveness of the
original filing.

(4) If collateral is brought into this state from an-
other jurisdiction, the rules stated in Section 9-103 de-
termine whether filing is necessary in this state.

Sec. 9-402. Formal Requisites of Financing Statement;
Amendments.—(1) A financing statement is sufficient if
it is signed by the debtor and the secured party, gives
an address of the secured party from which information
concerning the security interest may be obtained, gives
a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

(2) A financing statement which otherwise complies with subsection (1) is sufficient although it is signed only by the secured party when it is filed to perfect a security interest in

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state. Such a financing statement must state that the collateral was brought into this state under such circumstances.

(b) proceeds under Section 9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor) ...........................................
Address .................................................................
Name of secured party (or assignee) ................................
Address .................................................................

1. This financing statement covers the following types (or items) of property:
   (Describe) .....................................................................

2. (If collateral is crops) The above described crops are growing or are to be grown on:
   (Describe Real Estate) ..................................................

3. (If collateral is goods which are or are to become fixtures) The above described goods are affixed or to be affixed to:
   (Describe Real Estate) ..................................................

4. (If proceeds or products of collateral are claimed)
Proceeds—Products of the collateral are also covered.

Signature of Debtor (or Assignor) ........................................
Signature of Secured Party (or Assignee) ............................

(4) The term "financing statement" as used in this article means the original financing statement and any amendments but if any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment.

(5) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

Sec. 9-403. What Constitutes Filing; Duration of Filing; Effect of Lapsed Filing; Duties of Filing Officer.—(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article.

(2) A filed financing statement which states a maturity date of the obligation secured of five years or less is effective until such maturity date and thereafter for a period of sixty days. Any other filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such sixty day period after a stated maturity date or on the expiration of such five year period, as the case may be, unless a continuation statement is filed prior to the lapse. Upon such lapse the security interest becomes unperfected. A filed financing statement which states that the obligation secured is payable on demand is effective for five years from the date of filing.

(3) A continuation statement may be filed by the secured party (i) within six months before and sixty days after a stated maturity date of five years or less, and (ii) otherwise within six months prior to the expiration of the five year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. Upon timely filing of the continuation state-
ment, the effectiveness of the original statement is con-
tinued for five years after the last date to which the filing
was effective whereupon it lapses in the same manner
as provided in subsection (2) unless another continu-
ation statement is filed prior to such lapse. Succeeding
continuation statements may be filed in the same man-
ner to continue the effectiveness of the original state-
ment. Unless a statute on disposition of public records
provides otherwise, the filing officer may remove a lapsed
statement from the files and destroy it.

(4) A filing officer shall mark each statement with a
consecutive file number and with the date and hour of
filing and shall hold the statement for public inspection.
In addition the filing officer shall index the statements
according to the name of the debtor and shall note in the
index the file number and the address of the debtor
given in the statement.

(5) The uniform fee for filing, indexing and furnish-
ing filing data for an original or a continuation state-
ment shall be $1.00.

Sec. 9-404. Termination Statement.—(1) Whenever
there is no outstanding secured obligation and no com-
mitment to make advances, incur obligations or other-
wise give value, the secured party must on written de-
mand by the debtor send the debtor a statement that he
no longer claims a security interest under the financing
statement, which shall be identified by file number. A
termination statement signed by a person other than
the secured party of record must include or be accom-
panied by the assignment or a statement by the secured
party of record that he has assigned the security interest
to the signer of the termination statement. The uni-
form fee for filing and indexing such an assignment or
statement thereof shall be $1.00. If the affected secured
party fails to send such a termination statement within
ten days after proper demand therefor he shall be liable
to the debtor for one hundred dollars, and in addition
for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a
termination statement he must note it in the index. The
filing officer shall remove from the files, mark “terminated” and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto.

(3) The uniform fee for filing and indexing a termination statement including sending or delivering the financing statement shall be $1.00.

Sec. 9-405. Assignment of Security Interest; Duties of Filing Officer; Fees.—(1) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in Section 9-403(4). The uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be $1.00.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be $1.00.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.
Sec. 9-406. Release of Collateral; Duties of Filing Officer; Fees.—A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be $1.00.

PART 5. DEFAULT

Sec. 9-501. Default; Procedure When Security Agreement Covers Both Real and Personal Property.—(1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in Section 9-207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this part, those provided in the security agreement and those provided in Section 9-207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (1) of Section 9-505) and with respect to redemption of collateral (Section 9-506) but the parties may by agreement determine the standards by which the fulfillment of these rights and
duties is to be measured if such standards are not mani-
festly unreasonable:
(a) subsection (2) of Section 9-502 and subsection (2)
of Section 9-504 insofar as they require accounting for
surplus proceeds of collateral;
(b) subsection (3) of Section 9-504 and subsection (1)
of Section 9-505 which deal with disposition of collateral;
(c) subsection (2) of Section 9-505 which deals with
acceptance of collateral as discharge of obligation;
(d) Section 9-506 which deals with redemption of col-
lateral; and
(e) subsection (1) of Section 9-507 which deals with
the secured party’s liability for failure to comply with this
part.
(4) If the security agreement covers both real and
personal property, the secured party may proceed under
this part as to the personal property or he may proceed as
to both the real and the personal property in accordance
with his rights and remedies in respect of the real prop-
erty in which case the provisions of this part do not apply.
(5) When a secured party has reduced his claim to
judgment the lien of any levy which may be made upon
his collateral by virtue of any execution based upon the
judgment shall relate back to the date of the perfection
of the security interest in such collateral. A judicial sale,
pursuant to such execution, is a foreclosure of the security
interest by judicial procedure within the meaning of this
section, and the secured party may purchase at the sale
and thereafter hold the collateral free of any other re-
quirements of this article.
Sec. 9-502. Collection Rights of Secured Party.—(1)
When so agreed and in any event on default the secured
party is entitled to notify an account debtor or the
obligor on an instrument to make payment to him
whether or not the assignor was theretofore making
collections on the collateral, and also to take control of
any proceeds to which he is entitled under Section 9-306.
(2) A secured party who by agreement is entitled
to charge back uncollected collateral or otherwise to full
or limited recourse against the debtor and who under-
takes to collect from the account debtors or obligors
must proceed in a commercially reasonable manner and
may deduct his reasonable expenses of realization from
the collections. If the security agreement secures an
indebtedness, the secured party must account to the
debtor for any surplus, and unless otherwise agreed, the
debtor is liable for any deficiency. But, if the under-
lying transaction was a sale of accounts, contract rights,
or chattel paper, the debtor is entitled to any surplus
or is liable for any deficiency only if the security agree-
ment so provides.

Sec. 9-503. Secured Party's Right to Take Possession
After Default.—Unless otherwise agreed a secured party
has on default the right to take possession of the col-
lateral. In taking possession a secured party may pro-
cceed without judicial process if this can be done without
breach of the peace or may proceed by action. If the
security agreement so provides the secured party may
require the debtor to assemble the collateral and make
it available to the secured party at a place to be desig-
nated by the secured party which is reasonably con-
venient to both parties. Without removal a secured
party may render equipment unusable, and may dispose
of collateral on the debtor's premises under Section 9-504.

Sec. 9-504. Secured Party's Right to Dispose of Collat-
eral After Default; Effect of Disposition.—(1) A secured
party after default may sell, lease or otherwise dispose
of any or all of the collateral in its then condition or
following any commercially reasonable preparation or
processing. Any sale of goods is subject to the Article
on Sales (Article 2). The proceeds of disposition shall
be applied in the order following to
(a) the reasonable expenses of retaking, holding,
preparing for sale, selling and the like and, to the extent
provided for in the agreement and not prohibited by law,
the reasonable attorneys' fees and legal expenses in-
curred by the secured party;
(b) the satisfaction of indebtedness secured by the
security interest under which the disposition is made;
(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or who is known by the secured party to have a security interest in the collateral.

The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

(4) When collateral is disposed of by a secured party after default the disposition transfers to a purchaser for
value all of the debtor's rights therein, discharges the
security interest under which it is made and any se-
curity interest or lien subordinate thereto. The pur-
chaser takes free of all such rights and interests even
though the secured party fails to comply with the re-
quirements of this part or of any judicial proceedings
(a) in the case of a public sale, if the purchaser has
no knowledge of any defects in the sale and if he does
not buy in collusion with the secured party, other bid-
ders or the person conducting the sale; or
(b) in any other case, if the purchaser acts in good
faith.

(5) A person who is liable to a secured party under
a guaranty, indorsement, repurchase agreement or the
like and who receives a transfer of collateral from the
secured party or is subrogated to his rights has there-
after the rights and duties of the secured party. Such
a transfer of collateral is not a sale or disposition of the
collateral under this article.

Sec. 9-505. Compulsory Disposition of Collateral; Ac-
ceptance of the Collateral as Discharge of Obligation.—
(1) If the debtor has paid sixty per cent of the cash
price in the case of a purchase money security interest
in consumer goods or sixty per cent of the loan in the
case of another security interest in consumer goods, and
has not signed after default a statement renouncing or
modifying his rights under this part a secured party
who has taken possession of collateral must dispose of
it under Section 9-504 and if he fails to do so within
ninety days after he takes possession the debtor at his
option may recover in conversion or under Section 9-
507 (1) on secured party's liability.

(2) In any other case involving consumer goods or
any other collateral a secured party in possession may,
after default, propose to retain the collateral in satis-
faction of the obligation. Written notice of such pro-
posal shall be sent to the debtor and except in the case
of consumer goods to any other secured party who has
a security interest in the collateral and who has duly
filed a financing statement indexed in the name of the
debtor in this state or is known by the secured party
in possession to have a security interest in it. If the
debtor or other person entitled to receive notification
objects in writing within thirty days from the receipt
of the notification or if any other secured party objects in
writing within thirty days after the secured party ob-
tains possession the secured party must dispose of the
collateral under Section 9-504. In the absence of such
written objection the secured party may retain the col-
lateral in satisfaction of the debtor’s obligation.

Sec. 9-506. Debtor's Right to Redeem Collateral.—At
any time before the secured party has disposed of collat-
eral or entered into a contract for its disposition under
Section 9-504 or before the obligation has been discharged
under Section 9-505 (2) the debtor or any other secured
party may unless otherwise agreed in writing after de-
fault redeem the collateral by tendering fulfillment of
all obligations secured by the collateral as well as the
expenses reasonably incurred by the secured party in
retaking, holding and preparing the collateral for dis-
position, in arranging for the sale, and to the extent
provided in the agreement and not prohibited by law,
his reasonable attorneys’ fees and legal expenses.

Sec. 9-507. Secured Party’s Liability for Failure to
Comply with This Part.—(1) If it is established that the
secured party is not proceeding in accordance with the
provisions of this part disposition may be ordered or re-
strained on appropriate terms and conditions. If the
disposition has occurred the debtor or any person en-
titled to notification or whose security interest has been
made known to the secured party prior to the disposition
has a right to recover from the secured party any loss
caused by a failure to comply with the provisions of
this part. If the collateral is consumer goods, the debtor
has a right to recover in any event an amount not less
than the credit service charge plus ten per cent of the
principal amount of the debt or the time price differen-
tial plus ten per cent of the cash price.

(2) The fact that a better price could have been ob-
tained by a sale at a different time or in a different meth-
od from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

Article 10. Effective Date and Repealer

Section 10-101. Effective date.
Section 10-102. Specific repealer; provisions for transition.
Section 10-103. General repealer.
Section 10-104. Laws not repealed.

Section 10-101. Effective Date.—This chapter applies to transactions entered into and events occurring after the effective date thereof.

Sec. 10-102. Specific Repealer; Provisions for Transition.—(1) The following acts and all other acts and parts of acts inconsistent herewith are hereby repealed:
(a) the Uniform Negotiable Instruments Act;
(b) the Uniform Warehouse Receipts Act;
(c) the Uniform Stock Transfer Act;
(d) the Uniform Conditional Sales Act;
(e) the Uniform Trust Receipts Act.

(2) Transactions validly entered into before the effective date specified in Section 10-101 and the rights, duties and interest flowing from them remain valid thereafter and may be terminated, completed, consummated or en-
forced as required or permitted by any statute or other
law amended or repealed by this chapter as though such
repeal or amendment had not occurred.

Sec. 10-103. General Repealer.—Except as provided in
the following section, all acts and parts of acts inconsist-
ent with this chapter are hereby repealed.

Sec. 10-104. Laws Not Repealed.—(1) The Article on
Documents of Title (Article 7) does not repeal or modify
any laws prescribing the form or contents of documents
of title or the services or facilities to be afforded by bail-
ee, or otherwise regulating bailees’ businesses in respects
not specifically dealt with herein; but the fact that such
laws are violated does not affect the status of a document
of title which otherwise complies with the definition of a
document of title (Section 1-201).

(2) This chapter does not repeal Article 4D of Chap-
ter 31 cited as the Uniform Act for the Simplification of
Fiduciary Security Transfers, and if in any respect there
is any inconsistency between that article and the article
of this chapter on investment securities (Article 8) the
provisions of the former article shall control.

CHAPTER 194
(Senate Bill No. 26—By Mr. Carrigan)

[Passed March 9, 1963; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section six, article three, chap-
ter forty-one of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to wills and
specifying the circumstances under which a devise or be-
quest shall be construed to operate as an exercise of a power
of appointment.

Be it enacted by the Legislature of West Virginia:
That section six, article three, chapter forty-one of the code
of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**Article 3. Provisions as to Construction.**

Section 6. Operation of devise or bequest as exercise of power of appointment.

Section 6. Operation of Devise or Bequest as Exercise of Power of Appointment.—A devise or bequest shall extend to any real or personal estate which the testator has power to appoint as he may think proper, and to which it would apply if the estate were his own property, and shall be construed to operate as an exercise of such power with respect to such property unless a contrary intention shall appear by the will of said testator, or unless:

(a) The instrument creating said power of appointment (whether said instrument was executed before or after the effective date of this section) provides that such power must be specifically referred to and expressly exercised; and

(b) The instrument creating said power of appointment contains a provision disposing of said real or personal estate in the event of the failure of the donee of the power to so exercise said power.

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**CHAPTER 195**

*(Senate Bill No. 332—Originating in the Senate Committee on Finance)*

[Passed March 7, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the director of workmen's compensation, certain duties, his appointment, oath, bond, salary, seal and copies of orders, records and proceedings; and providing for legal services.
Be it enacted by the Legislature of West Virginia:

That section one, article one, chapter twenty-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. Director of Workmen's Compensation; Appointment; Oath; Bond; Compensation; Official Seal; Legal Services; Reference to Commissioner Deemed to Mean Director.

There shall be a state director of workmen's compensation who 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. An appointment may be made to fill a vacancy or otherwise when the senate is not in session, but shall be acted upon at the next session thereof. The person so appointed shall take the oath or affirmation prescribed by section five of article four of the constitution, and such oath shall be certified by the person who administers the same and shall be filed in the office of the secretary of state. He shall give bond in the penalty of twenty-five thousand dollars conditioned for the faithful performance of the duties of his office, which bond shall be approved by the attorney general as to form, and by the governor as to sufficiency. The surety of such bond may be a bonding or surety company, in which case the premiums shall be paid out of the appropriation made for the administration of this chapter. The director shall hold no position of trust or profit, or engage in any occupation or business, interfering or inconsistent with his duties as such director. The director shall receive an annual salary of ten thousand dollars, payable out of the workmen's compensation fund. The director shall have an official seal for the authentication of his orders and proceedings, upon which seal shall be engraved the words, "West Virginia Director of Workmen's Compensation," and such other design as the director may prescribe. The courts in this state shall take judicial notice of the seal of the director, and in all cases
copies of orders, proceedings or records in the office of the
West Virginia director of workmen's compensation, shall
be equal to the original in evidence.
The attorney general shall perform all legal services
required by the director under the provisions of this
chapter: Provided, however, That in any case in which
an application for review is prosecuted from any final
decision of the workmen's compensation appeal board to
the supreme court of appeals, as provided by section four,
article five of this chapter, or in any court proceedings,
including a proceeding before the workmen's compensa-
tion appeal board, in which such representation shall ap-
ppear to the director to be desirable, he may designate a
regular employee of his office, qualified to practice before
such court, to represent him upon such appeal or proceed-
ing, and in no case shall the person so appearing for the
director before the court receive remuneration therefor
other than his regular salary.
Wherever in this chapter or elsewhere in law reference
is made to "workmen's compensation commissioner" or
"compensation commissioner" such reference shall hence-
forth be construed and understood to mean "director of
workmen's compensation."

CHAPTER 196
(House Bill No. 573—By Mr. Moyers)

[Passed March 9, 1963; in effect from passage. Approved by the Governor.]

AN ACT authorizing the board of education of the county of
Braxton to create a Four-H Club development authority
and providing for the membership and purposes of the
authority; for the appointment and removal of members;
for the acquisition by the authority of real estate and
personal property; for the acquisition, construction, im-
provement, maintenance and operation of Four-H club
facilities; for corporate existence of the authority; for the
issuance of mortgage bonds, revenue bonds, other bonds,
debentures, notes and securities, and the giving of security for the payment thereof; for tax exemption for the property, funds and obligations of the authority; for the authority to lease said tracts of land or any part thereof; for the county court of the county of Braxton or the board of education of the county of Braxton to become the lessee of said tracts of land or any part thereof and pay the rental therefor; for contributions to the funds of the authority by the county court of the county of Braxton, the board of education of the county of Braxton and others; for the keeping of the funds and accounts of the authority; for the disposition of any surplus funds; for the covering of the employees of the authority by workmen's compensation; and for dissolution of the authority.

Be it enacted by the Legislature of West Virginia:

Braxton County Four-H Club Development Authority

Section
1. Board of education authorized to create.
2. Purposes.
3. Members of the authority.
4. Removal of member.
5. Substitution of members.
6. Qualification of members of the authority.
7. Payment of expenses of members.
8. Authority to be a public corporation.
10. Indebtedness of the authority.
11. Agreements in connection with obtaining funds.
12. Property, bonds and obligations of authority exempt from taxation.
13. County commissioners authorized to convey properties and facilities to the authority.
14. Property and facilities may be leased to the county court of the county of Braxton, the board of education of Braxton county or others.
15. Disposition of surplus of authority.
16. Contributions to authority; funds and accounts; publication of annual report.
17. Employees to be covered by workmen's compensation.
18. Dissolution of authority.
19. Automatic termination of the right to establish the authority.
20. Liberal construction of act.

Section 1. Board of Education Authorized to Create.—

The board of education of the county of Braxton is hereby authorized to create and establish a public agency to be known as the “Braxton County Four-H Club Development Authority” (hereinafter called the authority) for the purposes and in the manner hereinafter set forth.
Sec. 2. Purposes.—The authority is hereby authorized and empowered to acquire, equip, construct, improve, maintain and operate Four-H Club camps and facilities with all usual and convenient appurtenances, including but not limited to recreational facilities, such as swimming pools, tennis courts, golf courses and horse riding stables; and to operate, either directly or on a concession basis, any activity that is necessary or convenient, customary or desirable, and related or incidental to the above-mentioned camps and recreational facilities including but not limited to hotels, restaurants and gift shops.

Sec. 3. Members of the Authority.—The management and control of the authority, its property, operations, business and affairs, shall be lodged in a board of five persons who shall be known as “Members of the Authority,” each of whom shall be appointed for a term of five years, except that as to the first five appointed to the first board appointed, the term of one member shall expire on the first day of July next ensuing and the term of the next member shall expire on the first day of July two years thereafter, the term of another member shall expire on the first day of July three years thereafter, the term of another member shall expire on the first day of July four years thereafter, and the term of the remaining member shall expire on the first day of July five years thereafter.

All members shall be appointed by the board of education of the county of Braxton and no more than three shall be members of the same political party, nor shall they hold any political office of any nature.

The members of the authority shall be removable only for cause.

Sec. 4. Removal of Member.—If the board of education of the county of Braxton desires to remove a member of the authority it shall notify said member in writing, stating the reasons for the board of education of the county of Braxton desiring said removal. Within ten days of the receipt by the member of the authority of the written notice of removal, said member, if he so
8 desires, may have a hearing before the board of education
9 of the county of Braxton and any such hearing shall be
10 held within ten days of the member’s request for said
11 hearing. Any member so removed shall have the right
12 to petition the circuit court of Braxton county to review
13 the action of said board of education.

Sec. 5. Substitution of Members.—If any member of the
2 authority die, or resign, or be removed, or for any other
3 reason cease to be a member of the authority, the board
4 of education of the county of Braxton shall appoint an-
5 other person to fill the unexpired portion of the term
6 of such member.

Sec. 6. Qualification of Members of the Authority.—All
2 members of the board of the authority shall be citizens
3 of West Virginia, over thirty years of age, and residents
4 of Braxton county.

Sec. 7. Payment of Expenses of Members.—No mem-
2 ber of the board of the authority shall receive any com-
3 pensation, whether in form of salary, per diem allowances
4 or otherwise, for or in connection with his services as
5 member. Each member shall, however, be entitled to
6 reimbursement by the authority for any necessary ex-
7 penditures in connection with the performance of his gen-
8 eral duties as such member.

Sec. 8. Authority to Be a Public Corporation.—The au-
2 thority when created, and the members thereof, shall
3 constitute and be a public corporation under the name
4 of “Braxton County Four-H Club Development Author-
5 ity” and as such shall have perpetual succession, may
6 contract and be contracted with, sue and be sued, plead
7 and be impleaded and have and use a common seal.

Sec. 9. Powers.—The authority is hereby given power
2 and authority as follows:
3 (1) To make and adopt all necessary by-laws, rules
4 and regulations for its organization and operations not
5 inconsistent with law;
6 (2) To elect its own officers, to appoint committees
7 and to employ and fix the compensation for personnel
8 necessary for its operation;
(3) To enter into contracts with any person, governmental department, firm or corporation, including both public and private corporations, and generally to do any and all things necessary or convenient for the purpose of acquiring, equipping, constructing, maintaining, improving, extending, financing and operating Four-H camps and recreational facilities and all usual and convenient appurtenant activities and facilities in Braxton county, West Virginia, including but not limited to those enumerated in section two hereof;

(4) To delegate any authority given to it by law to any of its officers, committees, agents or employees;

(5) To apply for, receive and use grants in aid, donations and contributions from any source or sources, including but not limited to the federal government and any agency thereof, and the state of West Virginia, and to accept and use bequests, devises, gifts and donations from any person, firm or corporation;

(6) To acquire lands and hold title thereto in its own name;

(7) To purchase, own, hold, sell and dispose of personal property and to sell, lease or otherwise dispose of any real estate which it may own;

(8) To borrow money and execute and deliver negotiable notes, mortgage bonds, other bonds, debentures, and other evidences of indebtedness therefor, and give such security therefor as shall be requisite, including giving a mortgage or deed of trust on its property and facilities in connection with the issuance of mortgage bonds;

(9) To raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article four-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, it being hereby expressly provided that the authority is a “municipal authority” within the definition of that term as used in said article four-a, chapter eight of the code; and

(10) To expend its funds in the execution of the powers and authority herein given.
Sec. 10. Indebtedness of the Authority.—The authority may incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with carrying out its purposes as hereinbefore mentioned. No statutory limitation with respect to the nature or amount of indebtedness which may be incurred by municipalities or other public bodies shall apply to indebtedness of the authority. No indebtedness of any nature of the authority shall constitute an indebtedness of the county court of the county of Braxton, nor of said county nor of said board of education, or a charge against any property of said county or board. No obligation incurred by the authority shall give any right against any member of the county court of the county of Braxton or any member of the said board of education or any member of the board of authority. The rights of creditors of the authority shall be solely against the authority as a corporate body and shall be satisfied only out of property held by it in its corporate capacity.

Sec. 11. Agreements in Connection with Obtaining Funds.—The authority may, in connection with obtaining funds for its purposes, enter into any agreement with any person, firm or corporation, including the federal government, or any agency or subdivision thereof, containing such provisions, covenants, terms and conditions as the authority may deem advisable.

Sec. 12. Property, Bonds and Obligations of Authority Exempt From Taxation.—The authority shall be exempt from the payment of any taxes or fees to the state or any subdivisions thereof or to any officer or employee of the state or of any subdivisions thereof. The property of the authority shall be exempt from all local and municipal taxes. Bonds, notes, debentures and other evidence of indebtedness of the authority are declared to be issued for a public purpose and to be public instrumentalities and, together with interest thereon, shall be exempt from taxes.

Sec. 13. County Commissioners Authorized to Convey Properties and Facilities to the Authority.—The county
court of the county of Braxton is hereby authorized to convey to the authority property owned by the county of Braxton, together with all the appurtenances and facilities therewith, such conveyance to be without consideration or for such price and upon such terms and conditions as the county court of the county of Braxton shall deem proper.

Sec. 14. Property and Facilities May Be Leased to the County Court of the County of Braxton, the Board of Education of Braxton County or Others.—The authority may lease the property on which such camp or camps and facilities are situated, in whole or in part, and all the appurtenances and facilities therewith, to the county court of the county of Braxton, to said board of education of Braxton county or to any other available lessee or lessees at such rental and upon such terms and conditions as the authority shall deem proper. If the authority determines to lease the property and its appurtenances and facilities, as a whole, it shall first offer the same to the county court of the county of Braxton upon an annual lease and it shall not lease said property and its appurtenances and facilities as a whole to any other lessee until the county court of the county of Braxton has notified the authority that it does not desire to lease said properties, which notice shall be given within thirty days after notice by the authority of a desire on its part to lease the property as a whole. The county court of the county of Braxton is hereby authorized to enter into a lease with the authority for said property and appurtenances and facilities at such rental and upon such terms and conditions as it shall deem proper, and the county court of the county of Braxton is hereby authorized to levy taxes as provided by law for the purpose of paying the rent for said property, appurtenances and facilities. The authority, however, may lease one or more portions of its property without first offering the same to the county court of the county of Braxton. Such lease shall be for some purpose associated with recreational or other related activities.

Sec. 15. Disposition of Surplus of Authority.—If the au-
authority should realize a surplus, whether from operating
the property or leasing it for operation, over and above
the amount required for the maintenance, improvement
and operation thereof and for meeting all required pay-
ments on its obligations, it shall set aside such reserve
for future operations, improvements and contingencies
as it shall deem proper and shall then apply the residue
of such surplus, if any, to the payment of any recognized
and established obligations not then due; and after all
such recognized and established obligations have been
paid off and discharged in full, the authority shall, at
the end of each fiscal year, set aside the reserve for
future operations, improvements and contingencies, as
aforesaid, and then pay the residue of such surplus, if
any, to the county court of the county of Braxton to
be used by said county court for general county pur-
poses, or to the board of education of Braxton county
for educational purposes as the authority may deem
proper.

Sec. 16. Contributions to Authority; Funds and Ac-
counts; Publication of Annual Report.—Contributions
may be made to the authority from time to time by the
county court of the county of Braxton, the board of educa-
tion of Braxton county and by any persons, firms or cor-
porations that shall desire so to do. All such funds and all
other funds received by the authority shall be deposited
in such bank or banks as the authority may direct and
shall be withdrawn therefrom in such manner as the
authority may direct. The authority shall keep strict
account of all its receipts and expenditures and shall
each quarter make a report to the board of educa-
tion of the county of Braxton containing an itemized
account of its receipts and disbursements during the
preceding quarter. Such report shall be made within
sixty days after the termination of the quarter. Within
sixty days after the end of each fiscal year, the authority
shall make an annual report containing an itemized state-
ment of its receipts and disbursements for the preceding
year and such annual report shall be published once a
week for two successive weeks in two newspapers of
opposite politics published in Braxton county, West Vir-
Sec. 17. Employees to Be Covered by Workmen's Compensation.—All employees of the authority eligible thereunder shall be deemed to be within the workmen's compensation act of West Virginia and premiums shall be paid by the authority to the workmen's compensation fund as required by law.

Sec. 18. Dissolution of Authority.—The authority may at any time pay off and discharge in full all of its indebtedness, obligations and liabilities, convey its properties, appurtenances and facilities to the board of education of the county of Braxton and be dissolved. Before making such conveyance of its properties, the authority shall first publish notice of its intention so to do and of its intention to be dissolved, once a week for four successive weeks in two newspapers of opposite politics published in, and of general circulation in Braxton county, West Virginia, if there be two such papers, or otherwise in any newspaper of general circulation in said county. Certificates from the publishers of the papers or paper showing such publication shall be filed with the board of education of the county of Braxton on or before the deed conveying said properties is delivered. Any funds remaining in the hands of the authority at the time of the conveyance of said properties shall be by the authority paid over to the board of education of the county of Braxton to be used by it for purposes in connection with said properties. Upon the payment of its indebtedness, obligations and liabilities, the publishing of the notices aforesaid, the conveyance of its properties and the paying over to the board of education of the county of Braxton of any funds remaining in its hands, the authority shall cause a certificate showing its dissolution to be
executed under its name and seal and to be recorded in
the office of the clerk of the county court of Braxton
county and thereupon its dissolution shall be complete.

Sec. 19. Automatic Termination of the Right to Establish the Authority.—If on or before the first day of July,
one thousand nine hundred sixty-three, the board of
education of the county of Braxton shall not have ap-
pointed the members of the authority who are to con-
stitute the board for management of its business and
affairs, as provided in section three hereof, all right to
create and establish said authority under this act shall
automatically terminate.

Sec. 20. Liberal Construction of Act.—It is the purpose
of this act to provide for the acquisition, construction,
improvement, extension, maintenance and operation of a
Four-H camp or camps and recreational facilities and
appurtenant facilities in a prudent and economical man-
er, and this act shall be liberally construed as giving
to the authority full and complete power reasonably
required to give effect to the purposes hereof. The pro-
visions of this act are in addition to and not in derogation
of any power existing in the board of education and the
county court of the county of Braxton under any con-
stitutional or statutory provisions which they may now
have, or may hereafter acquire.

Sec. 21. Provisions Severable.—The several sections
and provisions of this act are severable, and if any section
or provision hereof shall be held unconstitutional, all the
remaining sections and provisions of this act shall never-
theless remain valid.

CHAPTER 197
(House Bill No. 540—By Mr. Baker and Mr. Poindexter)

[Passed March 8, 1963; in effect ninety days from passage.
Approved by the Governor.]

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, as amended by sections one, two and twenty-four, chapter one hundred thirty-nine, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, creating and defining the purposes and jurisdiction of the common pleas court of Cabell county and fixing the salary of the judge thereof.

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 seventeen; 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 forty-two, acts of the Legislature, regular session, one thousand nine hundred forty-nine, as amended by section twenty-four, chapter one hundred seventy-nine, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, creating and defining the purposes and jurisdiction of the common pleas court of Cabell county and fixing the salary of the judge thereof.
sand nine hundred fifty-nine, be amended and reenacted to read as follows:

Section

1. Common pleas court of Cabell county established.
2. Jurisdiction; supervision, etc., of criminal and civil cases before justices, etc.

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 and civil 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, and of all civil actions or proceedings at law, except where it shall appear from the pleadings that the matter in controversy exceeds the value of twenty-five thousand dollars; and also appellate jurisdiction in all cases, civil and criminal, from judgments of justices of the peace in said county, police judge or mayor of any incorporated city, town or village, or of any inferior tribunal therein, wherein an appeal, writ of error, supersedeas or writ of certiorari may be allowed; subject to the right to proceed by appeal, writ of error, supersedeas or certiorari in all matters to the circuit court of Cabell county, as provided in section fifteen, chapter
twenty-eight, acts of the Legislature, regular session, one
thousand eight hundred ninety-three, and section twenty-
six, chapter ninety, acts of the Legislature, regular session,
one thousand nine hundred seventeen.

Sec. 24. Salary of Judge.—The judge of the common
pleas court of Cabell County shall receive for his services
thirteen thousand five hundred dollars annually, payable
monthly in installments beginning on the first day of July,
one thousand nine hundred sixty-three, which amount
shall be provided for and paid by the county court, out of
the treasury of said county, which provision as to salary
shall not repeal the existing provision until the said first
day of July, one thousand nine hundred sixty-three.
All acts or parts of acts inconsistent or in conflict with
this act are hereby repealed.

CHAPTER 198
(House Bill No. 541—By Mr. Baker and Mr. Poindexter)

(Passed March 8, 1963; in effect ninety days from passage. Approved by the
Governor.)

AN ACT to amend and reenact 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 hun-
dred thirty-nine, as amended by chapter one hundred
forty, acts of the Legislature, regular session, one thousand
nine hundred forty-nine, as amended by chapter one hun-
dred eighty-one, acts of the Legislature, regular session,
one thousand nine hundred fifty-three, as amended by
chapter one hundred eighty, acts of the Legislature, regu-
lar session, one thousand nine hundred fifty-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.
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, as amended by chapter one hundred forty, acts of the Legislature, regular session, one thousand nine hundred forty-nine, as amended by chapter one hundred eighty-one, acts of the Legislature, regular session, one thousand nine hundred fifty-three, as amended by chapter one hundred eighty, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, be amended and reenacted to read as follows:

Section 1. Cabell County Domestic Relations Court Created.—There is hereby created and established in and for the county of Cabell, with authority and jurisdiction coextensive with the county, a court to be known as the "Domestic Relations Court" of Cabell county, for the trial of annulment of marriages, separate maintenance suits, divorces, alimony causes, the care and disposition of delinquent, defective, neglected and dependent children, and desertion and nonsupport of wives and legitimate and illegitimate children, reciprocal dependency, adoption, change of name, and for the enforcement of the general school laws, arising within the said county or coming within the jurisdiction of the court as provided by the general laws of this state and as hereinafter provided; and independent of the foregoing for the trial of certain causes heretofore recognized as being in chancery and as hereinafter limited and defined, it being the intent and purpose of this act to create a court of limited jurisdiction for the purposes herein set forth.

Sec. 2. Jurisdiction.—The said domestic relations court shall have jurisdiction within the said county of Cabell, concurrent with the circuit court, of all matters and causes arising out of or pertaining
to annulment of marriages, separate maintenance suits, divorce, alimony, the custody and maintenance of children of litigants and the adjudication of property rights arising out of the same, and all other matters and causes coming within the purview of chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, and all amendments and reenactments thereof concerning domestic relations; of all matters and causes coming within the purview of chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one, acts of the Legislature of West Virginia, one thousand nine hundred thirty-six, and of all amendments and reenactments thereof commonly known as the child welfare law; of all matters and causes coming within the purview of chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, and all amendments and reenactments thereof, commonly called the general school law; of all matters and causes coming within the purview of chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, and of all amendments and reenactments thereof, commonly known as the adoption law; and of all matters and causes coming within the purview of chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, and of all amendments and reenactments thereof, commonly known as the change of name law; and of all matters and causes coming within the purview of chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, and of all amendments and reenactments thereof, commonly known as the maintenance of illegitimate children law; and of all matters and causes coming within the purview of all other or future acts of the Legislature touching the subject matter and of any and all said laws, laws and acts of the amendments and reenactments thereof, and of the common law
of said state relating to the subject matter thereof. Independently of any of the foregoing matters, the said domestic relations court shall also have and is hereby given what was heretofore recognized as general equity jurisdiction concurrent with the circuit court, excepting in cases involving the enforcement of criminal laws and labor disputes, and excepting cases where it shall appear from the pleadings that matter or thing in controversy exceeds in value the sum of one hundred fifty thousand dollars. The proceedings and modes of procedure and power and jurisdiction conferred by law upon the circuit court or the common pleas court in any and all of said matters and causes are hereby conferred upon and shall be exercised by said domestic relations court.

Sec. 4. Salary of Judge.—The judge of the domestic relations court of Cabell county shall receive for his services thirteen thousand five hundred dollars, annually, payable monthly in installments beginning on the first day of July, one thousand nine hundred sixty-three, which amount shall be provided for and paid by the county court, out of the treasury of said county, which provision as to salary shall not repeal the existing provision until the said first day of July, one thousand nine hundred sixty-three.

All acts or parts of acts inconsistent or in conflict with this act are hereby repealed.

CHAPTER 199
(House Bill No. 479—By Mr. Baker and Mr. Casey)

[Passed February 23, 1963; in effect from passage. Approved by the Governor.]

AN ACT authorizing the county court of Cabell county to create a special fund for capital outlay known as the special building and improvement fund to be used for the construction, improvement, renovation, reconstruction, remodeling, and equipping of the courthouse of Cabell
county, and to transfer into the special fund so created from year to year funds raised by levy and any unexpended funds or surpluses from the county general funds; and to expend the special fund for the construction, improvement, renovation, reconstruction, remodeling, and equipping of the courthouse of Cabell county, and to retransfer part or all of said special fund back into the county general fund upon a two-thirds vote of the county court.

Be it enacted by the Legislature of West Virginia:

Section 1. Cabell county court authorized to create special building and improvement fund.

Section 2. Cabell county court authorized to transfer special funds into the special building and improvement fund; levy funds and transfer any unexpended or surplus funds from county general fund.

Section 3. Cabell county court authorized to expend special building and improvement fund.

Section 4. Retransfer of funds.

Section 1. Cabell County Court Authorized to Create Special Building and Improvement Fund.—The county court of Cabell county is hereby authorized and empowered to create a special building and improvement fund to be used for the construction, improvement, renovation, reconstruction, remodeling, or equipping of the Cabell county courthouse.

Sec. 2. Cabell County Court Authorized to Transfer Special Funds into the Special Building and Improvement Fund; Levy Funds and Transfer any Unexpended or Surplus Funds from County General Fund.—The county court of Cabell county is hereby authorized and empowered to transfer surpluses in any special funds to the special building and improvement fund, to lay a levy and to transfer the proceeds thereof into said special building and improvement fund, and to transfer into said special fund, any unexpended or surplus funds from the county reserve fund.

Sec. 3. Cabell County Court Authorized to ExpendDate Special Building and Improvement Fund.—The county court of Cabell county is hereby authorized and empowered to expend such part or all of the special building and improvement fund from time to time as may be
deemed necessary by the court for the construction, improvement, renovation, reconstruction, remodeling, or equipping of the Cabell county courthouse.

Sec. 4. Retransfer of Funds.—In cases of emergency or as may from time to time be deemed necessary, the county court of Cabell county, by a two-thirds vote thereof, shall be empowered to retransfer funds from the special building and improvement fund herein created to the county general fund.

CHAPTER 200
(House Bill No. 106—By Mr. Holderby)

(Passed March 7, 1963; in effect July 1, 1963. Approved by the Governor.)

AN ACT to amend and reenact chapter one hundred seventy-eight, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, authorizing and empowering the county court of Cabell county to convert the Cabell county farm at Ona, West Virginia, into a youth center; to create a board of supervisors for the purpose of constructing buildings and making land improvements, and establishing, equipping, developing, operating, financing, administering and managing said youth center; to create as integral parts thereof (a) a medium security school for the detention of youth pending hearing before the juvenile court and for juveniles adjudged delinquent; (b) a centralized foster home for homeless, abandoned, dependent and neglected children and (c) a recreational center for youth; and to authorize the power of purchase and of eminent domain for the acquisition of real estate for the use and benefit of the Cabell county youth center.

Be it enacted by the Legislature of West Virginia:

That chapter one hundred seventy-eight, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, be amended and reenacted to read as follows:
Cabell County Youth Center.

Section

1. Cabell county court authorized to convert county farm at Ona into a youth center.
2. Board of supervisors; composition; how elected; terms of members; reimbursement of expenses; qualifications; removal; oath; organization; powers.
3. Medium security school.
4. Foster homes division.
5. Recreation division; recreational facilities; operating personnel.
6. Estimate of construction, maintenance and operating costs; county court to provide funds; payment of expenses; special fund; gifts and bequests.
7. Acquisition of land by purchase; condemnation proceedings.

Section 1. Cabell County Court Authorized to Convert County Farm at Ona into a Youth Center.—The county court of Cabell county is hereby authorized and empowered to convert the county farm at Ona, West Virginia, into a youth center to be known as the Cabell county youth center. Its integral parts shall be known as (a) medium security school division of the Cabell county youth center; (b) foster homes division of the Cabell county youth center; and (c) recreation division of the Cabell county youth center.

Sec. 2. Board of Supervisors; Composition; How Elected; Terms of Members; Reimbursement of Expenses; Qualifications; Removal; Oath; Organization; Powers.—The Cabell county youth center and its integral parts shall be governed by a board known as the board of supervisors of the Cabell county youth center, and which said board of supervisors shall be created as hereinafter set forth, for the purpose of establishing, constructing buildings and making land improvements, equipping, developing, operating, financing, administering and managing said youth center and its integral parts.

The board of supervisors shall consist of twelve regular members elected one by and from each of the following organizations: Huntington ministerial association; Cabell county medical association; Cabell county bar association; county court of Cabell county; Huntington district labor council; womens inter-club council; Cabell county parent-teachers association; Cabell county board
of education; family services, inc.; Ona parent-teachers association; Cabell county department of welfare; and the juvenile division of the Huntington police department.

The terms of the first four hereinabove named shall expire on the thirtieth day of June, one thousand nine hundred sixty-three; the terms of the second group of four hereinabove named shall expire on the thirtieth day of June, one thousand nine hundred sixty-four; and the terms of all the remaining members hereinabove named shall expire on the thirtieth day of June, one thousand nine hundred sixty-five. Upon the expiration of the terms specifically set out hereinabove, each person thereafter shall be appointed for a term of three years, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was chosen, shall be chosen only for the remainder of such term. Members shall be eligible to succeed themselves.

The mayor of the city of Huntington, or someone designated by him, the mayors of the towns of Barboursville and of Milton, the sheriff of Cabell county, or a deputy sheriff designated by him, and the Cabell county agricultural agent shall be ex officio members of said board of supervisors with voting privileges equal to that of each and every other member.

The board of supervisors shall serve without compensation except they may be reimbursed for any expenses incurred in the performance of their duties.

Each regular member of the board of supervisors shall be a bona fide citizen and resident of said county and any regular member thereof who shall cease to be a bona fide citizen and resident of said county shall thereby be disqualified as a member of the board, and his office shall thereupon become vacant.

Any regular member of the board of supervisors may be removed from office for dishonesty, incompetency or neglect of duty in office in the same manner and for the same reasons as, by the constitution and statutes of this state, are made and provided for the removal of general county officers.
Prior to entering upon their duties each member of the board of supervisors shall take an oath in writing to support the constitution of the United States and of the state of West Virginia and to faithfully perform the duties of a member of said board. Said oaths shall be filed in the office of the clerk of the county court of Cabell county.

The board shall designate one of its members as president, another as vice president, and shall select a secretary from the board membership or otherwise. It shall fix the time and place of its meetings: Provided, however, That it shall hold at least one meeting each calendar month, and six members present shall constitute a quorum.

The board of supervisors shall provide for the employment of an executive director whose duties shall be to execute the orders of the board of supervisors and direct the overall management of the youth center. The board shall also have the power to employ and fix the compensation of any and all persons as in its opinion may be necessary for the operation, maintenance, administration and management of the property under its control, limited however, by the authority vested in the West Virginia department of welfare by section four hereof, and limited further by the appropriation of funds for such purposes by the county court of Cabell county.

The board of supervisors shall have the power to make rules and regulations and to enforce same, as may be necessary for the management and control of the youth center and each of its integral parts.

Sec. 3. Medium Security School.—The medium security school of the Cabell county youth center shall be maintained at the Cabell county farm at Ona, West Virginia, by the board of supervisors as one of the divisions of the Cabell county youth center. It may be used for the detention of juveniles pending hearing before the juvenile court of Cabell county within the discretion of the judge of said court; and it shall be used for the training of juveniles who have been adjudged delinquent and committed thereto by said court. It shall not be
deemed a penal institution, a jail or a prison. It shall be conducted and respected as comparable to a “school away from home.” There shall be maintained at the school, or in close proximity thereto, by the board of supervisors, sufficient class rooms and equipment for the proper education and training during the regular nine months school period, of all juveniles residing in said medium security school. The board of education of Cabell county, at its own expense, shall furnish sufficient teachers of proper qualifications to adequately staff said class rooms and to furnish proper educational training for all those committed to said school, to the end that those so committed shall be allowed and required to progress in education and in spiritual and moral development in preparation for a return to a normal life.

The juveniles while residing in the medium security school shall be kept separate and apart from the youth using the facilities of the two other divisions of said youth center, or with other youth in the public schools of the county. Nothing herein contained, however, shall prevent the residents of the medium security school from being assigned to outdoor work in and about the farm, at proper times, so long as they are not in company with other juveniles who are not committed to the school.

The board of supervisors may appoint an assistant director in charge of the medium security school who shall be answerable to the executive director and to the board. The assistant director in charge of the medium security school shall be provided with such other personnel as to the board may seem necessary to assist in maintaining the school, securing the custody of the juveniles therein, and carrying out general supervision of the school to the end that order and discipline shall be maintained. Compensation to be paid the assistant director and all personnel of said school shall be fixed by the board and paid as hereinafter provided.

The board of supervisors, shall, within its discretion, have the power and authority to accept juveniles upon commitment by the juvenile courts of other counties in
West Virginia, and to make arrangements with the county court of such counties for the payment of the fair per capita, per diem cost for each juvenile so committed, and which payments shall be credited to the fiscal account of the Cabell county youth center.

The procedure for the release of juveniles committed to the medium security school shall be as follows:

After a juvenile has been committed to the school for at least six months he shall be advised by the executive director of his right to apply in writing for release. He shall be afforded and may sign a petition in which he shall state the reasons he thinks are grounds for his release. The executive director shall then call a meeting with the assistant director, the teachers and all other paid employees who have had personal contact with and supervision of said juvenile and said staff shall then review the petition and shall make such recommendations as they deem proper to the next meeting of the board of supervisors. After review of the juvenile's petition and record the board may take such action as to it may seem proper. If the board be of opinion to recommend the release of the juvenile, it shall then submit such recommendation to the juvenile court over the signature of the executive director, the president of the board and the teacher that last had the juvenile in school.

Within a reasonable time thereafter the juvenile court shall review the case history of the juvenile and after considering the recommendations of the staff and the board, shall enter such order as to the court may seem to be in the best interest of the juvenile.

Sec. 4. Foster Homes Division.—The foster homes division of the Cabell county youth center shall be erected and maintained at the Cabell county farm at Ona, West Virginia, as homes for Cabell county children who are orphans, homeless, neglected or deserted, or who, if permitted to run ungoverned or undisciplined, are apt to become delinquent, and which said children are within the age prescribed by the statutes of this state for juveniles.
The board of supervisors of the Cabell county youth center shall cause to be erected and maintained at said farm sufficient cottages and of capacity to comfortably house in each cottage not more than twenty children. Each cottage when children are housed therein shall have as "cottage parents" a husband and wife team in charge, both of whom shall be persons of good moral character, experienced in child care, having proper understanding of children and temperamentally fit to care and rear them. Each cottage shall be conducted comparable to a well-ordered home, with proper supervision and understanding discipline maintained by the "cottage parents." The children therein housed shall be treated as members of a well-ordered family where there is proper intellectual, physical, spiritual and exemplary moral training. Each child shall be given a home therein so long as its need therefor exists and it remains a juvenile or until a satisfactory permanent home has been found or it is placed for adoption.

The foster homes division shall be made available for any and all Cabell county children now or hereafter to be under the control of the state or county department of welfare, all Cabell county children cared for by any of the other welfare agencies, youth or child centers, private homes or institution within the county.

Both the West Virginia and Cabell county departments of welfare, at the earliest practicable time after the facilities hereinabove provided have been made ready to receive said children, shall appear before the juvenile court of Cabell county and bring to the court’s attention the name of each and every child then in Cabell county and in the custody of both of the said departments, the whereabouts of each child, and all facts and circumstances which to the department or the court may appear pertinent with relation to each child, and all of which the court shall consider, and having so considered shall then enter an order committing said child to the foster homes division, or releasing it to the department as to the court may seem just and proper, and the court may from time to time make such other and further orders for the disposition of said child or children as may be just or proper:
Provided, however, That the above procedure shall apply only to children of school age. All children of pre-school age may be maintained at said foster homes division or elsewhere, within the sound discretion of the departments of welfare, but wherein children of pre-school age are placed in said foster division, then such placement shall be by order of the juvenile court of Cabell county in the same manner as hereinabove provided for all other children.

For the support and maintenance of the children placed in said foster homes division by the departments of welfare, they shall contribute the standard amount paid by the departments to private foster homes in other counties of the state. The money so contributed shall be paid to the county court of Cabell county and by that court set aside for the use of said foster homes division.

The “cottage parents” and all other personnel required for the efficient operation of said cottages in which children are maintained shall be carefully selected by the West Virginia department of welfare. Said “cottage parents,” under the guidance and supervision of the West Virginia department of welfare, shall be responsible for the supervision and training of all the children committed to their care; for keeping them in school during school terms and hours; for teaching them to do a reasonable amount of work, and for making each cottage as nearly self-supporting as possible. The husband member of the “cottage parents” shall lead and teach the older male children under his care, at reasonable times and seasons, in agricultural practices and methods, which may include gardening, truck farming, fruit growing, poultry raising, dairying, and like occupations, and upon such land as may be assigned by the board of supervisors for such purposes. The wife member of the “cottage parents” shall lead and teach the older female children under her care, at reasonable times, in the art and practices of home making which may include cooking, laundering, cleaning, and the like.

The children residing in said foster homes shall be required, when within school age, and when their health and physical condition permits, to attend the public
schools. The board of education of said county shall make provisions for them in the public school at Ona, West Virginia, or if any one or more of them be in a grade higher than is taught at Ona, then provision therefor shall be made in a school wherein such grade is taught.

Complete supervision of the foster homes division, together with the employment and discharge of any and all personnel including "cottage parents" shall be under the West Virginia department of welfare. The salary of each person so employed shall be reasonable and be determined by the department, and when approved by the board of supervisors shall be certified for payment as is provided in section six hereof.

In advance of the submission by the board of supervisors of the estimate of all monetary needs of the Cabell county youth center to the county court as provided in section six hereof, the West Virginia department of welfare shall furnish to the board of supervisors an estimate of all reasonable monetary needs of the foster homes division for the next fiscal year, said estimate shall cover all anticipated costs for services for all employees and personnel employed in the reasonable operation of said foster homes, and all other reasonable expenses incident thereto, and which said estimate shall be certified to the board of supervisors and by that board included in the estimate rendered to the county court of Cabell county as required by section six, paragraph one, hereof.

Sec. 5. Recreation Division; Recreational Facilities; Operating Personnel.—The board of supervisors is authorized to maintain a place for recreation for the youth of Cabell county at the Cabell county farm at Ona, West Virginia. The board is hereby authorized to erect, at said farm, such playgrounds, swimming pools, tennis courts, ball parks, golf courses, and such other facilities as to the board may seem advisable, where Cabell county youth may assemble, under proper adult supervision for play, sport, entertainment, recreation or instruction. The board is also authorized to erect and maintain as the
needs require, cottages, assembly halls, kitchens, mess halls, and camping quarters, which may be leased at terms and rates as to the board may appear proper. It is the intent hereof to provide a place for assembly of youth groups from churches, scouts, clubs or any other worthy youth organizations, for purposes hereinabove set out and to the end that the recreation division may be used as a preventive of delinquency in youth and for the building of strong bodies and strong characters.

The board of supervisors is authorized to employ a camp manager and such other personnel as may be required to operate said facilities and to the end that the greatest possible value may accrue to youth and that same may be as nearly self-supporting as possible. The manager and personnel shall be answerable to the board, and under the direct supervision of the executive director.

Sec. 6. Estimate of Construction, Maintenance and Operating Costs; County Court to Provide Funds; Payment of Expenses; Special Fund; Gifts and Bequests.—The board of supervisors shall annually prepare and submit to the county court of Cabell county, in advance of the levy term of said court, an estimate of all the monetary needs of the Cabell county youth center and each of its integral parts, for the next fiscal year, said estimate shall cover anticipated costs for construction, maintenance and operation of buildings, and all anticipated expenses relative to the operation of said youth center for the ensuing fiscal year. The county court of Cabell county shall receive said estimate and provide in the annual budget of the county, for the reasonable requirements of said youth center as set forth in said estimate and for each of its divisions. But no obligations shall be incurred or debts contracted by the board of supervisors in excess of said budget, without prior consent of the county court.

All current expenses for salaries, supplies and such other things as are required for the efficient operation of the said youth center, including construction costs, shall be certified for payment at the end of each calendar month to the county court of Cabell county by the president and secretary of the board of supervisors, in writing, and signed by each of them. Thereupon the county court
shall cause same to be paid out of the separate fund
created for said Cabell county youth center, and other-
wise to be paid in the same manner as general current
county expenses are paid.

The county court of Cabell county shall have the power
and authority to transfer moneys from inactive funds,
special unused funds, or the general county fund to a
separate fund for the use of the Cabell county youth
center, as needs may require. The county court of Cabell
county is further authorized and empowered to receive
and expend for the purposes herein provided, gifts,
bequests and donations from any person, corporation,
firm or association.

Sec. 7. Acquisition of Land by Purchase; Condemna-
tion Proceedings.—The county court of Cabell county,
upon request of the board of supervisors of the Cabell
county youth center, shall have the right to purchase real
estate including the power of eminent domain to institute
proper proceedings to condemn land for the use and bene-
fit of the Cabell county youth center. Reasonable requests
by the board of supervisors for the purchase or con-
demnation of land for the use and benefit of the Cabell
county youth center shall be complied with by the county
court of Cabell county.

Sec. 8. Provisions Severable.—The several sections
and provisions of this act are severable. If any section or
provision hereof shall be held unconstitutional all the re-
main ing sections and provisions of the act shall neverthe-
less remain valid.

CHAPTER 201
(House Bill No. 254—By Mr. Ford)

[Passed February 18, 1963; in effect from passage. Approved by the Governor.]

AN ACT authorizing the expenditure of surplus funds by the
Greenbrier county court.
Be it enacted by the Legislature of West Virginia:

Section 1. Greenbrier county unexpended and surplus funds; use and disposition for additions to the county courthouse and for a health center.

Section 1. Greenbrier County Unexpended and Surplus Funds; Use and Disposition for Additions to the County Courthouse and for a Health Center.—The county court of Greenbrier county is hereby authorized and empowered to use any unexpended sums and surpluses, presently or hereafter existing, in the general fund or in any special fund of said county, for the purpose of creating a special fund for repairs, improvements and additions to the courthouse of Greenbrier county and to construct and maintain a health center in Greenbrier county.

CHAPTER 202
(House Bill No. 135—By Mr. Poling)

[Passed March 9, 1963; in effect from passage. Approved by the Governor.]

AN ACT authorizing the county court of Jackson county to expend surplus money for development and improvement of recreational facilities in said county.

Be it enacted by the Legislature of West Virginia:

Section 1. County court of Jackson county may expend surplus money for recreational facilities.

Section 1. County Court of Jackson County May Expend Surplus Money for Recreational Facilities.—The county court of Jackson county may expend surplus money from the general county fund, or any surplus money from any special fund available, for the development and improvement of recreational facilities in Jackson county: Provided, however, That development and improvement of such recreational facilities shall be only on property owned by the county of Jackson.
CHAPTER 203
(House Bill No. 544—By Mr. Brotherton)

[Passed March 8, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, chapter one hundred eighty-five, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, relating to the terms of court; maturity of causes; procedure; and probation staff of the juvenile court of Kanawha county.

Be it enacted by the Legislature of West Virginia:

Section 8. Terms of court; maturity of causes; procedure; probation staff.

Section 8. Terms of Court; Maturity of Causes; Procedure; Probation Staff.—For the purpose of maturing, docketing, hearing and determining all matters, petitions and other proceedings properly determinable in the juvenile 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 any matter, suit, action, petition or proceeding pending in the court, respecting the care, custody, control and disposition of such delinquent, neglected or mentally or physically handicapped children, as the judges of the circuit courts have under the laws of the state. All matters arising under the jurisdiction of the court 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.

The mode of procedure in causes instituted in this court shall be the same as that prescribed by either chapter forty-eight or chapter forty-nine of the code of West Virginia, as the case may require. The court is author-
ized and empowered to appoint and discharge such additional officers, probation officers, counselors, psychologists, and such medical, clerical and secretarial assistance as shall enable the court to discharge all the duties required of it under the provisions of this act and the general laws of the state, and such personnel shall be paid by the county court monthly such sums as are annually appropriated by the county court, plus reimbursement by the county court of his or her necessary expenses actually incurred monthly in the performance of official duties, including mileage, as fixed by the judge and approved by the county court, for his or her automobile driven in the performance of official duties. The county court shall make provisions for payment and pay the salaries of said appointees, as shown by the order of appointment, in equal monthly installments. Expenses and mileage accounts of said appointees shall be itemized, verified and presented to and paid by the county court, provided such accounts are approved in writing by the judge.

CHAPTER 204

(House Bill No. 462—By Mr. Ghis and Mr. Mathis)

[Passed February 23, 1963; in effect from passage. Approved by the Governor.]

AN ACT authorizing the county court of Logan county to transfer from the unexpended balances in the "Dog Tax" fund to the general fund the sum of three thousand five hundred dollars for the purpose of acquiring a bookmobile and equipment.

Be it enacted by the Legislature of West Virginia:

Section 1. Logan County Dog Tax Fund; Transfer of Funds.—The county court of Logan county shall have authority to transfer from the unexpended balances in the dog tax fund to the general fund the sum of three thousand five hundred dollars.
AN ACT to compensate Ruth Wilderman for personal injuries and to reimburse her for medical, hospital and other expenses incurred as a result of a fall in the Marion county library, in the city of Fairmont, Marion county, West Virginia.

WHEREAS, On May tenth, one thousand nine hundred sixty, Ruth Wilderman of Fairmont, Marion county, West Virginia, was a visitor at the Marion county library; and

WHEREAS, Said library was under the jurisdiction, control and supervision of the county court of Marion County, West Virginia, and was maintained and operated for the convenience of Ruth Wilderman and other citizens; and

WHEREAS, While leaving said building and in closing the door by the doorknob, the knob detached from the door and as a result she was thrown off balance and was hurled violently from the elevated platform to the concrete walk; and

WHEREAS, As a result of said fall, the said Ruth Wilderman suffered bruises, abrasions, cuts, contusions, and was hospitalized and necessarily incurred certain medical, hospital and other expenses; and

WHEREAS, The loosened and defective condition of the doorknob was known to the maintenance force of the library and to the librarian, employees of the Marion county court, and the said Ruth Wilderman was in no sense at fault in the premises; therefore,

Be it enacted by the Legislature of West Virginia:

Section 1. Marion county court authorized to pay claim of Ruth Wilderman.

Section 2. Finding of moral obligation.

Section 1. Marion County Court Authorized to Pay Claim of Ruth Wilderman.—The county court of Marion
county is hereby authorized, as in its discretion it may see
fit, to pay the sum of twenty-two hundred dollars to Ruth
Wilderman to compensate her for her personal injuries
suffered and to reimburse her for medical, hospital and
other expenses incurred as a result of the defective door-
handle at the Marion county library coming loose and
causing her to fall.

Sec. 2. Finding of Moral Obligation.—It is hereby
declared to be the finding of the Legislature based upon its
conclusions of fact, that the authorization set forth in
section one of this act for compensation of Ruth Wilder-
man for personal injuries sustained and to reimburse her
for medical, hospital and other expenses incurred as a
result of said personal injuries resulting from the defective
condition of the public premises under the jurisdiction of
and maintained and operated by, the county court of
Marion county, West Virginia, is in satisfaction of a moral
obligation of the said county court.

CHAPTER 206
(House Bill No. 8—By Mr. Watson)

[Passed January 28, 1963; in effect ninety days from passage.
Approved by the Governor.]

AN ACT to amend and reenact section three, chapter sixty-
ine, acts of the Legislature, regular session, one thousand
nine hundred nineteen, relating to the election and term of
the judge of the criminal court of Marion county.

Be it enacted by the Legislature of West Virginia:
That section three, chapter sixty-nine, acts of the Legisla-
ture, regular session, one thousand nine hundred nineteen, be
amended and reenacted to read as follows:

Section
3. Election of judge; terms; judge in office to complete term for
which elected.
Section 3. Election of Judge; Term; Judge in Office to Complete Term For Which Elected.—There shall, at the general election to be held in this state on the Tuesday next after the first Monday in November in the year one thousand nine hundred sixty-four and every eight years thereafter, be elected by the voters of said county a judge of said criminal court who shall be a resident member of the bar of said county and shall be disqualified from practicing law during his continuance in office, who shall preside over said court for the term of eight years from the first day of January succeeding his election, and shall be, except as to jurisdiction, subject to the laws in force governing judges of circuit courts.

The judge of said court elected at the general election held in the year one thousand nine hundred sixty shall continue in the office of judge of said court for the term ending December thirty-first, one thousand nine hundred sixty-four.

CHAPTER 207
(House Bill No. 553—By Mr. Watson)

[Passed March 1, 1963; in effect from passage. Approved by the Governor.]

AN ACT authorizing the county court of Marion county to lease county property.

Be it enacted by the Legislature of West Virginia:

Section 1. County court of Marion county authorized to lease county property.

Section 1. County Court of Marion County Authorized to Lease County Property.—The county court of Marion county, West Virginia, is hereby authorized to lease or rent any county-owned real property that is determined to be surplus to the present or immediate needs of the county. Such property may be leased or rented to any responsible person, firm or corporation as the county court
may select, and for such uses and at such rental fees as the county court may deem proper.
All rentals or proceeds derived from such leases or rentals shall be placed to the credit of the general county fund of Marion county.

CHAPTER 208
(House Bill No. 89—By Mr. Mentz)

[Passed February 1, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, chapter one hundred ninety-three, acts of the Legislature, regular session, one thousand nine hundred fifty-three, fixing terms of the criminal court of McDowell county.

Be it enacted by the Legislature of West Virginia:
That section eleven, chapter one hundred ninety-three, acts of the Legislature, regular session, one thousand nine hundred fifty-three, be amended and reenacted to read as follows:

Section 11. Terms of McDowell county criminal court.

Section 11. Terms of McDowell County Criminal Court.—There shall be four terms of said court held in each year, commencing on the Tuesday following the second Monday in the months of January, April, July and October. Adjourned and special terms of said court may be called and held as provided for adjourned and special terms of the circuit court.

CHAPTER 209
(House Bill No. 117—By Mr. Buch and Mr. Weaver)

[Passed February 18, 1963; in effect from passage. Approved by the Governor.]

AN ACT to authorize the board of education of the county of Ohio to refund taxes collected under authority of chapter sixty-seven, acts of the Legislature, regular session, one
thousand nine hundred fifty-seven, which act has heretofore been declared unconstitutional by the supreme court of appeals of West Virginia.

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

Section 1. The board of education of the county of Ohio authorized to refund certain taxes.

Section 1. The Board of Education of the County of Ohio Authorized to Refund Certain Taxes.—The board of education of the county of Ohio is hereby authorized and empowered to refund any taxes collected by it under the authority conferred by chapter sixty-seven, acts of the Legislature, regular session, one thousand nine hundred fifty-seven, which act has heretofore been declared unconstitutional by the supreme court of appeals of West Virginia in State v. Brown, 103 S. E. 2nd 892. A taxpayer shall be entitled to a refund of said taxes upon the filing of a written petition with the board requesting such refund, and the presentation of satisfactory proof that the tax was actually paid. If the fund into which the tax was deposited has not been expended, the refund shall be made promptly by the board from that fund. If such fund has been expended, the board shall make provision in its next annual budget for the payment of such refund.

**CHAPTER 210**

*(House Bill No. 443—By Mr. Liller, by request)*

[Passed February 23, 1963; in effect from passage. Approved by the Governor.]

AN ACT authorizing the county court of Preston county to create a special fund for construction, improvement, renovation, major repair and equipping of county buildings; and to transfer into the special fund so created any proceeds from the real or personal property owned by said county court as well as funds raised by levy and any unexpended funds or surpluses from the county general funds; and to retransfer part or all of said special fund back into the county general fund upon a two-thirds vote of the county court.
Be it enacted by the Legislature of West Virginia:

Section

1. Preston county court authorized to create special building and improvement fund.
2. Preston county court authorized to transfer into the special building and improvement fund, incomes received from county property, levy funds and any unexpended or surplus funds from county general fund.
3. Preston county court authorized to invest and reinvest the special building and improvement fund.
4. Preston county court authorized to expend special building and improvement fund.
5. Retransfer of funds.

Section 1. Preston County Court Authorized to Create Special Building and Improvement Fund.—The county court of Preston county is hereby authorized and empowered to create a special fund for capital outlay known as the special building and improvement fund to be used for the construction, acquisition, improvement, renovation, reconstruction, remodeling, major repair or equipping of a new county office building, or other building or existing county buildings, county farm, courthouse or jail, and to purchase from said fund such real estate as may be deemed necessary to carry out the purposes herein set forth.

Sec. 2. Preston County Court Authorized to Transfer into the Special Building and Improvement Fund, Incomes Received from County Property, Levy Funds and Any Unexpended or Surplus Funds from County General Fund.—The county court of Preston county is hereby authorized and empowered to transfer to the special building and improvement fund, from year to year, funds received from the sale, leasing or rental of county property, real or personal, whether the same be now owned or hereafter acquired, and from year to year to lay a levy and to transfer the proceeds thereof into said special fund, and to transfer into said special fund any unexpended or surplus funds from the county general fund.

Sec. 3. Preston County Court Authorized to Invest and Reinvest the Special Building and Improvement Fund.—The county court of Preston county shall have the authority from time to time as may be deemed necessary to
AN ACT authorizing the county court of the county of Raleigh to create a tourist development authority and providing for the membership and purposes of the authority; for the appointment and removal of members; for the acquisition
by the authority of real estate and personal property; for
the acquisition, construction, improvement, maintenance
and operation of public tourist facilities; for corporate
existence of the authority; for the issuance of mortgage
bonds, revenue bonds, other bonds, debentures, notes and
securities, and the giving of security for the payment
thereof; for tax exemption for the property, funds and
obligations of the authority; for acquisition by the author-
ity from the county court of the county of Raleigh of a
tract of land of approximately two thousand four hundred
acres situate in Trap Hill district of said county on which
is located an artificial body of water known as "Lake
Stephens"; and the improvement of said tract and oper-
ation of the facilities located thereon; for the authority
to lease said tract or any part thereof; for the county
court of the county of Raleigh to become the lessee of
said tract or any part thereof and pay the rental therefor;
for contributions to the funds of the authority by the
county court of the county of Raleigh and others; for the
keeping of the funds and accounts of the authority; for
the disposition of any surplus funds; for the covering of
the employees of the authority by workmen's compensa-
tion; and for dissolution of the authority.

Be it enacted by the Legislature of West Virginia:

Section

1. Lake Stephens tourist development authority.
2. Purposes.
3. Members of the authority.
4. Removal of members.
5. Substitution of members.
6. Qualification of members of the authority.
7. Members of authority to serve without compensation; reimburse-
   ment for expenses.
8. Authority to be a public corporation.
10. Indebtedness of the authority.
11. Agreements in connection with obtaining funds.
12. Right of eminent domain.
13. Property, bonds and obligations of authority exempt from taxation.
14. County commissioners authorized to convey present Stephens Lake
   properties and facilities to the authority.
15. Authority may lease lake and facilities to the county court of the
   county of Raleigh or other lessee.
17. Contributions to authority by the county court of the county of
   Raleigh and others; funds and accounts of the authority.
18. Employees to be covered by workmen's compensation.
19. Dissolution of authority.
20. Automatic termination of the right to establish the authority.
21. Liberal construction of act.

Section 1. Lake Stephens Tourist Development Authority.—The county court of the county of Raleigh is hereby authorized to create and establish a public agency to be known as the “Lake Stephens Tourist Development Authority” (hereinafter called the authority) for the purposes and in the manner hereinafter set forth.

Sec. 2. Purposes.—The authority is hereby authorized and empowered to acquire, equip, construct, improve, maintain and operate public tourist facilities with all usual and convenient appurtenances, including but not limited to recreational facilities, in Raleigh county, West Virginia, to serve as a public operated tourist facility.

Sec. 3. Members of the Authority.—The management and control of the authority, its property, operations, business and affairs, shall be lodged in a board of five persons who shall be known as “Members of the Authority,” each of whom shall be appointed for a term of five years, except that as to the first five appointed to the first board appointed, the term of one member shall expire on the first day of July next ensuing and the term of the next member shall expire on the first day of July two years thereafter, the term of another member shall expire on the first day of July three years thereafter, the term of another member shall expire on the first day of July four years thereafter, and the term of the remaining member shall expire on the first day of July five years thereafter.

All members shall be appointed by the county court of the county of Raleigh and no more than three shall be members of the same political party, nor shall they hold any political office of any nature: Provided, however, That excepting the county court members of the authority not more than one member shall be appointed from the same magisterial district.

Sec. 4. Removal of Members.—The members of the authority shall be removable only for cause. If the county court of the county of Raleigh desires to remove a mem-
Sec. 5. Substitution of Members.—If any member of the authority die, or resign, or be removed, or for any other reason cease to be a member of the authority, the county court of the county of Raleigh shall appoint another person to fill the unexpired portion of the term of such member.

Sec. 6. Qualification of Members of the Authority.—All members of the board of the authority shall be citizens of West Virginia, over thirty years of age, and residents of Raleigh county: Provided, however, That no person representing any person, partnership or corporation doing business with the authority shall be eligible for membership on the board.

Sec. 7. Members of Authority to Serve without Compensation; Reimbursement for Expenses.—No member of the board of the authority shall receive any compensation, whether in form of salary, per diem allowances or otherwise, for or in connection with his services as member. Each member shall, however, be entitled to reimbursement by the authority for any necessary expenditures in connection with the performance of his general duties as such member.

Sec. 8. Authority to Be a Public Corporation.—The authority when created, and the members thereof, shall constitute and be a public corporation under the name of “Lake Stephens Tourist Development Authority” and as such shall have perpetual succession, may contract and be contracted with, sue and be sued, plead and be impleaded, and have and use a common seal.
Sec. 9. Powers.—The authority is hereby given power and authority as follows:

(1) To make and adopt all necessary by-laws, rules and regulations for its organization and operations not inconsistent with law;

(2) To elect its own officers, to appoint committees and to employ and fix the compensation for personnel necessary for its operation;

(3) To enter into contracts with any person, governmental department, firm or corporation, including both public and private corporations, and generally to do any and all things necessary or convenient for the purpose of acquiring, equipping, constructing, maintaining, improving, extending, financing and operating public tourist facilities and all usual and convenient appurtenant activities and facilities in Raleigh county, West Virginia;

(4) To delegate any authority given to it by law to any of its officers, committees, agents or employees;

(5) To apply for, receive and use grants-in-aid, donations and contributions from any source or sources, including but not limited to the federal government and any agency thereof, excluding the state of West Virginia, and to accept and use bequests, devices, gifts and donations from any person, firm or corporation;

(6) To acquire lands and hold title thereto in its own name;

(7) To purchase, own, hold, sell and dispose of personal property and to sell, lease or otherwise dispose of any real estate which it may own;

(8) To borrow money and execute and deliver negotiable notes, mortgage bonds, other bonds, debentures, and other evidences of indebtedness therefor, and give such security therefor as shall be requisite, including giving a mortgage or deed of trust on its Lake Stephens property and facilities in connection with the issuance of mortgage bonds;

(9) To raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article four-a, chapter eight of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, it being hereby expressly provided that the authority is a "municipal authority" within the definition of that term as used in said article four-a, chapter eight of the code; and

(10) To expend its funds in the execution of the powers and authority herein given.

Sec. 10. **Indebtedness of the Authority.**—The authority may incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with carrying out its purposes as hereinbefore mentioned. No statutory limitation with respect to the nature or amount of indebtedness which may be incurred by municipalities or other public bodies shall apply to indebtedness of the authority. No indebtedness of any nature of the authority shall constitute an indebtedness of the county court of the county of Raleigh, nor of said county, or a charge against any property of said county. No obligation incurred by the authority shall give any right against any member of the county court of the county of Raleigh or any member of the board of the authority. The rights of creditors of the authority shall be solely against the authority as a corporate body and shall be satisfied only out of property held by it in its corporate capacity.

Sec. 11. **Agreements in Connection with Obtaining Funds.**—The authority may, in connection with obtaining funds for its purposes, enter into any agreement with any person, firm or corporation, including the federal government, or any agency or subdivision thereof, containing such provisions, covenants, terms and conditions as the authority may deem advisable.

Sec. 12. **Right of Eminent Domain.**—The authority herein created shall not have the power to exercise the right of eminent domain.

Sec. 13. **Property, Bonds and Obligations of Authority Exempt from Taxation.**—The authority shall be exempt from the payment of any taxes or fees to the state or any subdivisions thereof or to any officer or employee of the
state or of any subdivisions thereof. The property of
the authority shall be exempt from all local and munici-
pal taxes. Bonds, notes, debentures and other evidence
of indebtedness of the authority are declared to be issued
for a public purpose and to be public instrumentalities,
and, together with interest thereon, shall be exempt from
taxes.

Sec. 14. County Commissioners Authorized to Convey
Present Stephens Lake Properties and Facilities to the
Authority.—The county court of the county of Raleigh is
hereby authorized to convey to the authority the present
property owned by the county of Raleigh, situate in
the Trap Hill district of said county comprising two
thousand four hundred acres, more or less, on which is
located an artificial body of water known as Lake Ste-
phens, together with all the appurtenances and facili-
ties therewith, such conveyance to be without considera-
tion or for such price and upon such terms and conditions
as the county court of the county of Raleigh shall deem
proper.

Sec. 15. Authority May Lease Lake and Facilities to
the County Court of the County of Raleigh or Other Les-
see.—The authority may lease Lake Stephens and the
property on which it is situated, in whole or in part, all
the appurtenances and facilities therewith to the county
court of the county of Raleigh or to any other available
lessee or lessees at such rental and upon such terms and
conditions as to the authority shall seem proper. If the
authority determines to lease the property and its ap-
purtenances and facilities, as a whole, it shall first offer
the same to the county court of the county of Raleigh up-
on an annual lease, and it shall not lease said property
and its appurtenances and facilities, as a whole, to any oth-
er lessee until the county court of the county of Raleigh
has notified the authority that it does not desire to lease
said properties, which notice shall be given within thirty
days after notice by the authority of a desire on its part
to lease the property as a whole. The county court of the
county of Raleigh is hereby authorized to enter into a
lease with the authority for said property and appurten-
ances and facilities at such rental and upon such terms
and conditions as it shall deem proper, and the county
court of the county of Raleigh is hereby authorized to
levy taxes as provided by law for the purpose of paying
the rent for said property, appurtenances and facilities.
The authority, however, may lease one or more portions
of said property and lake situated thereon without first
offering the same to the county court of the county of
Raleigh. Such lease shall be for some purpose associated
with tourist accommodations, recreation or other related
ties.

Sec. 16. Disposition of Surplus of Authority.—If the
authority should realize a surplus, whether from operat-
ing the property or leasing it for operation, over and
above the amount required for the maintenance, improve-
ment and operation thereof and for meeting all required
payments on its obligations, it shall set aside such reserve
for future operations, improvements and contingencies as
it shall deem proper and shall then apply the residue of
such surplus, if any, to the payment of any recognized
and established obligations not then due; and after all
such recognized and established obligations have been
paid off and discharged in full, the authority shall, at
the end of each fiscal year, set aside the reserve for fu-
ture operations, improvements and contingencies, as
aforesaid, and then pay the residue of such surplus, if
any, to the county court of the county of Raleigh, to be
used by said county court for general county purposes.

Sec. 17. Contributions to Authority by the County
Court of the County of Raleigh and Others; Funds and Ac-
counts of the Authority.—Contributions may be made to
the authority from time to time by the county court of
the county of Raleigh and by any persons, firms or cor-
porations that shall desire so to do. All such funds and
all other funds received by the authority shall be de-
posited in such bank or banks as the authority may di-
rect and shall be withdrawn therefrom in such manner
as the authority may direct. The authority shall keep
strict account of all its receipts and expenditures and shall
each quarter make a quarterly report to the county court
of the county of Raleigh containing an itemized account
of its receipts and disbursements during the preceding
quarter. Such report shall be made within sixty days
after the termination of the quarter. Within sixty days
after the end of each fiscal year, the authority shall make
an annual report containing an itemized statement of its
receipts and disbursements for the preceding year, and
such annual report shall be published once a week for two
successive weeks in two newspapers of opposite politics
published in Raleigh county, West Virginia, and of general
circulation in Raleigh County, West Virginia. The books,
records and accounts of the authority shall be subject to
audit and examination by the office of the state tax com-
missioner of West Virginia and by any other proper pub-
lic official or body in the manner provided by law.

Sec. 18. Employees to Be Covered by Workmen's Com-
pen sation.—All employees of the authority eligible there-
under shall be deemed to be within the workmen's com-
pen sation act of West Virginia, and premiums shall be
paid by the authority to the workmen's compensation
fund as required by law.

Sec. 19. Dissolution of Authority.—The authority may
at any time pay off and discharge in full all of its indebt-
edness, obligations and liabilities, reconvey its properties,
appurtenances and facilities to the county court of the
county of Raleigh and be dissolved. Before making such
reconveyance of its properties, the authority shall first
publish notice of its intention so to do and of its intention
to be dissolved, once a week for four successive weeks in
two newspapers of opposite politics published in, and of
general circulation in Raleigh county, West Virginia. Cer-
tificates from the publishers of the papers showing such
publication shall be filed with the county court of the
county of Raleigh on or before the deed reconveying said
properties is delivered. Any funds remaining in the hands
of the authority at the time of the reconveyance of said
properties shall be by the authority paid over to the
county court of the county of Raleigh to be used by it for
purposes in connection with said properties. Upon the
payment of its indebtedness, obligations and liabilities,
the publishing of the notices aforesaid, the reconveyance of its properties, and the paying over to the county court of the county of Raleigh of any funds remaining in its hands, the authority shall cause a certificate showing its dissolution to be executed under its name and seal and to be recorded in the office of the clerk of the county court of Raleigh county, and thereupon its dissolution shall be complete.

Sec. 20. Automatic Termination of the Right to Establish the Authority.—If on or before the first day of July, one thousand nine hundred sixty-three, the county court of the county of Raleigh shall not have appointed the members of the authority who are to constitute the board for management of its business and affairs, as provided in section three hereof, all right to create and establish said authority under this act shall automatically terminate.

Sec. 21. Liberal Construction of Act.—It is the purpose of this act to provide for the acquisition, construction, improvement, extension, maintenance and operation of public tourist facilities and appurtenant facilities in a prudent and economical manner, and this act shall be liberally construed as giving to the authority full and complete power reasonably required to give effect to the purposes hereof. The provisions of this act are in addition to and not in derogation of any power existing in the county court of the county of Raleigh under any constitutional or statutory provisions which it may now have, or may hereafter acquire.

Sec. 22. Provisions Severable.—The several sections and provisions of this act are severable, and if any section or provision hereof shall be held unconstitutional, all the remaining sections and provisions of this act shall nevertheless remain valid.
AN ACT to authorize the county court of the county of Raleigh to create an airport authority and providing for the membership and purposes of the authority; for the appointment and removal of members; for the acquisition by the authority of real estate and personal property; for the acquisition, construction, improvement, maintenance and operation of a public airport; for corporate existence of the authority; for the issuance of mortgage bonds, revenue bonds, other bonds, debentures, notes and securities, and the giving of security for the payment thereof; for the authority to exercise the power of eminent domain; for tax exemption for the property, funds and obligations of the authority; for acquisition by the authority from the county court of the county of Raleigh of the present county airport and the improvement and operation thereof; for the authority to lease the airport; for the county court of the county of Raleigh to become the lessee of the airport and pay the rental therefor; for contributions to the funds of the authority by the county court of the county of Raleigh and others; for the keeping of the funds and accounts of the authority; for the disposition of any surplus funds; for the covering of the employees of the authority by workmen's compensation; and for dissolution of the authority.

Be it enacted by the Legislature of West Virginia:

Section
1. Raleigh county airport authority authorized.
2. Purposes.
3. Members of the authority.
4. Removal of members.
5. Substitution of members.
6. Qualification of members of the authority.
7. Compensation of members of the authority.
10. Indebtedness of the authority.
11. Agreements in connection with obtaining funds.
12. Authority to have right of eminent domain.
13. Property, bonds and obligations of authority exempt from taxation.
14. County commissioners authorized to convey present airport properties and facilities to the authority.
15. Authority may lease airport and facilities to the county court of the county of Raleigh or other lessee.
17. Contributions to authority by the county court of the county of Raleigh and others; funds and accounts of the authority.
18. Employees to be covered by workmen’s compensation.
19. Dissolution of authority.
20. Automatic termination of the right to establish the authority.
21. Liberal construction of act.

Section 1. Raleigh County Airport Authority Authorized.—The county court of the county of Raleigh is hereby authorized to create and establish a public agency to be known as the “Raleigh County Airport Authority” for the purposes and in the manner hereinafter set forth.

Sec. 2. Purposes.—The authority is hereby authorized and empowered to acquire, equip, construct, improve, maintain and operate a public airport with all usual and convenient appurtenances and facilities in Raleigh county, West Virginia, to serve as a public airport for the convenience and accommodation of the inhabitants of Raleigh county and the public generally.

Sec. 3. Members of the Authority.—The management and control of the Raleigh county airport authority, its property, operations, business and affairs, shall be lodged in a board of five persons who shall be known as “Members of the Authority”, each of whom shall be appointed for a term of five years, except that as to the first four appointed to the first board appointed, the term of one member shall expire on the first day of July next ensuing and the term of the next member shall expire on the first day of July two years thereafter, the term of another member shall expire on the first day of July three years thereafter and the term of the remaining member shall expire on the first day of July four years thereafter: Provided, however, That the county commissioner appointed to serve as a member of the authority, as hereinafter provided, shall not serve for a term as member of the authority which is longer than his term of office as a member of the county court of the county of Raleigh.

All members shall be appointed by the county court of
the county of Raleigh: Provided, however, That one mem-
ber of the authority shall be a member of the county
court of the county of Raleigh: Provided further, That of
the remaining four members of the authority no more than
two shall be members of the same political party, nor shall
they hold any political office of any nature.

Sec. 4. Removal of Members.—The members of the
authority shall serve at the will and pleasure of the
county court of the county of Raleigh: Provided, however,
That if the county court of the county of Raleigh desires
to remove a member of the authority it shall notify said
member in writing, stating the reasons for the county
court of the county of Raleigh desiring said removal.
Within ten days of the receipt by the member of the
authority of the written notice of removal, said member,
if he so desires, may have a hearing before the county
court of the county of Raleigh, and any such hearing
shall be held within ten days of the member's request for
said hearing.

Sec. 5. Substitution of Members.—If any member of
the authority die, or resign, or be removed, or for any
other reason cease to be a member of the authority, the
county court of the county of Raleigh shall appoint an-
other person to fill the unexpired portion of the term of
such member.

Sec. 6. Qualification of Members of the Authority.—
All members of the board of the authority shall be citi-
zens of West Virginia, over thirty years of age, and resi-
dents of Raleigh county.

Sec. 7. Compensation of Members of the Authority.—
No member of the board of the authority shall receive
any compensation, whether in form of salary, per diem
allowances or otherwise, for or in connection with his
services as such member. Each member shall, however,
be entitled to reimbursement by the authority for any
necessary expenditures in connection with the perform-
ance of his general duties as such member.

Sec. 8. Authority to Be a Public Corporation.—The
authority when created, and the members thereof, shall
constitute and be a public corporation under the name of "Raleigh County Airport Authority", and as such shall have perpetual succession, may contract and be contracted with, sue and be sued, plead and be impleaded, and have and use a common seal.

Sec. 9. Powers.—The Raleigh county airport authority is hereby given power and authority as follows:

(1) To make and adopt all necessary by-laws, rules and regulations for its organization and operations not inconsistent with law;

(2) To elect its own officers, to appoint committees and to employ and fix the compensation for personnel necessary for its operation;

(3) To enter into contracts with any person, governmental department, firm or corporation, including both public and private corporations, and generally to do any and all things necessary or convenient for the purpose of acquiring, equipping, constructing, maintaining, improving, extending, financing and operating a public airport in Raleigh county, West Virginia;

(4) To delegate any authority given to it by law to any of its officers, committees, agents or employees;

(5) To apply for, receive and use grants-in-aid, donations and contributions from any source or sources, including but not limited to the federal government and any agency thereof, and the state of West Virginia, and to accept and use bequests, devises, gifts and donations from any person, firm or corporation;

(6) To acquire lands and hold title thereto in its own name;

(7) To purchase, own, hold, sell and dispose of personal property and to sell, lease or otherwise dispose of any real estate which it may own;

(8) To borrow money and execute and deliver negotiable notes, mortgage bonds, other bonds, debentures, and other evidences of indebtedness therefor, and give such security therefor as shall be requisite, including giving a mortgage or deed of trust on its airport proper-
ties and facilities in connection with the issuance of mortgage bonds;

(9) To raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article four-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, it being hereby expressly provided that the Raleigh county airport authority is a "municipal authority" within the definition of that term as used in said article four-a, chapter eight of the code; and

(10) To expend its funds in the execution of the powers and authority herein given.

Sec. 10. Indebtedness of the Authority.—The authority may incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with carrying out its purposes as hereinbefore mentioned. No statutory limitation with respect to the nature or amount of indebtedness which may be incurred by municipalities or other public bodies shall apply to indebtedness of the authority. No indebtedness of any nature of the authority shall constitute an indebtedness of the county court of the county of Raleigh, nor of said county, or a charge against any property of said county. No obligation incurred by the authority shall give any right against any member of the county court of the county of Raleigh or any member of the board of the authority. The rights of creditors of the authority shall be solely against the authority as a corporate body and shall be satisfied only out of property held by it in its corporate capacity.

Sec. 11. Agreements in Connection with Obtaining Funds.—The authority may, in connection with obtaining funds for its purposes, enter into any agreement with any person, firm or corporation, including the federal government, or any agency or subdivision thereof, containing such provisions, covenants, terms and conditions as the authority may deem advisable.

Sec. 12. Authority to Have Right of Eminent Domain. —Whenever it shall be deemed necessary by the author-
ity in connection with the exercise of its powers herein conferred, to take or acquire any lands, structures or buildings or other rights, either in fee or as easements, for the purposes herein set forth, the authority may purchase the same directly or through its agents from the owner or owners thereof, or failing to agree with the owner or owners thereof, the authority may exercise the power of eminent domain in the manner provided for condemnation proceedings in chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as heretofore and hereafter amended, and such purposes are hereby declared to be public uses for which private property may be taken or damaged.

Sec. 13. Property, Bonds and Obligations of Authority Exempt from Taxation.—The authority shall be exempt from the payment of any taxes or fees to the state or any subdivisions thereof or to any officer or employee of the state or of any subdivisions thereof. The property of the authority shall be exempt from all local and municipal taxes. Bonds, notes, debentures and other evidence of indebtedness of the authority are declared to be issued for a public purpose and to be public instrumentalities, and, together with interest thereon, shall be exempt from taxes.

Sec. 14. County Commissioners Authorized to Convey Present Airport Properties and Facilities to the Authority.—The county court of the county of Raleigh is hereby authorized to convey to the authority the present airport property owned by the county of Raleigh, situate in Raleigh county, together with all the appurtenances and facilities therewith, such conveyance to be without consideration or for such price and upon such terms and conditions as the county court of the county of Raleigh shall deem proper.

Sec. 15. Authority May Lease Airport and Facilities to the County Court of the County of Raleigh or Other Lessee.—The authority may lease its airport and all the appurtenances and facilities therewith to the county court of the county of Raleigh or to any other available lessee at such rental and upon such terms and conditions
as to the authority shall seem proper. If the authority
determines to lease the airport and its appurtenances
and facilities, as a whole, it shall first offer the same to
the county court of the county of Raleigh upon an
annual lease, and it shall not lease the airport and its
appurtenances and facilities as a whole to any other
lessee until the county court of the county of Raleigh
has notified the authority that it does not desire to lease
said properties, which notice shall be given within thirty
days after notice by the authority of a desire on its
part to lease the airport as a whole. The county court
of the county of Raleigh is hereby authorized to enter
into a lease with the authority for said airport and appur-
tenances and facilities at such rental and upon such terms
and conditions as it shall deem proper, and the county
court of the county of Raleigh is hereby authorized to
levy taxes as provided by law for the purpose of paying
the rent for said airport, appurtenances and facilities.
The authority, however, may lease one or more portions
of said airport, not including runways and taxiways,
without first offering the same to the county court of
the county of Raleigh. Such lease shall be for some pur-
pose associated with airport activities.

Sec. 16. Disposition of Surplus of Authority.—If the
authority should realize a surplus, whether from oper-
ating the airport or leasing it for operation, over and
above the amount required for the maintenance, im-
provement and operation of the airport and for meeting
all required payments on its obligations, it shall set aside
such reserve for future operations, improvements and
contingencies as it shall deem proper and shall then apply
the residue of such surplus, if any, to the payment of any
recognized and established obligations not then due; and
after all such recognized and established obligations have
been paid off and discharged in full, the authority shall,
at the end of each fiscal year, set aside the reserve for
future operations, improvements and contingencies, as
aforesaid, and then pay the residue of such surplus, if any,
to the county court of the county of Raleigh, to be used by
said county court for general county purposes.
Sec. 17. Contributions to Authority by the County Court of the County of Raleigh and Others; Funds and Accounts of the Authority.—Contributions may be made to the authority from time to time by the county court of the county of Raleigh and by any persons, firms or corporations that shall desire so to do. All such funds and all other funds received by the authority shall be deposited in such bank or banks as the authority may direct and shall be withdrawn therefrom in such manner as the authority may direct. The authority shall keep strict account of all its receipts and expenditures and shall each quarter make a quarterly report to the county court of the county of Raleigh containing an itemized account of its receipts and disbursements during the preceding quarter. Such report shall be made within sixty days after the termination of the quarter. Within sixty days after the end of each fiscal year, the authority shall make an annual report containing an itemized statement of its receipts and disbursements for the preceding year, and such annual report shall be published once a week for two successive weeks in two newspapers of opposite politics published in, and of general circulation in Raleigh county, West Virginia. The books, records and accounts of the authority shall be subject to audit and examination by the office of the state tax commissioner of West Virginia and by any other proper public official or body in the manner provided by law.

Sec. 18. Employees to Be Covered by Workmen’s Compensation.—All employees of the authority eligible thereunder shall be deemed to be within the workmen’s compensation act of West Virginia, and premiums shall be paid by the authority to the workmen’s compensation fund as required by law.

Sec. 19. Dissolution of Authority.—The authority may at any time pay off and discharge in full all of its indebtedness, obligations and liabilities, reconvey the airport properties, appurtenances and facilities to the county court of the county of Raleigh and be dissolved. Before making such reconveyance of its properties, the authority shall first publish notice of its intention so to do and of
its intention to be dissolved, once a week for four successive weeks in two newspapers of opposite politics published in, and of general circulation in Raleigh county, West Virginia. Certificates from the publishers of the papers showing such publication shall be filed with the county court of the county of Raleigh on or before the deed reconveying said properties is delivered. Any funds remaining in the hands of the authority at the time of the reconveyance of said properties shall be by the authority paid over to the county court of the county of Raleigh to be used by it for purposes in connection with said airport. Upon the payment of its indebtedness, obligations and liabilities, the publishing of the notices aforesaid, the reconveyance of its properties, and the paying over to the county court of the county of Raleigh of any funds remaining in its hands, the authority shall cause a certificate showing its dissolution to be executed under its name and seal and to be recorded in the office of the clerk of the county court of Raleigh county, and thereupon its dissolution shall be complete.

Sec. 20. Automatic Termination of the Right to Establish the Authority.—If on or before the first day of July, one thousand nine hundred sixty-three, the county court of the county of Raleigh shall not have appointed the members of the authority who are to constitute the board for management of its business and affairs, as provided in section three thereof, all right to create and establish said Raleigh county airport authority under this act shall automatically terminate.

Sec. 21. Liberal Construction of Act.—It is the purpose of this act to provide for the acquisition, construction, improvement, extension, maintenance and operation of a public airport in a prudent and economical manner, and this act shall be liberally construed as giving to the authority full and complete power reasonably required to give effect to the purposes hereof. The provisions of this act are in addition to and not in derogation of any power existing in the county court of the county of Raleigh under any constitutional or statutory provisions which it may now have, or may hereafter acquire.
Sec. 22. Provisions Severable.—The several sections and provisions of this act are severable, and if any section or provision hereof shall be held unconstitutional, all the remaining sections and provisions of this act shall nevertheless remain valid.

CHAPTER 213

(House Bill No. 574—By Mr. Deem)

(Passed March 6, 1963; in effect ninety days from passage. Approved by the Governor.)

AN ACT authorizing the county court of Ritchie county, West Virginia, to use unexpended funds or any surpluses in the general fund or in any special fund of said county for the purpose of encouraging and promoting agricultural and Four-H participation in the Ritchie county fair.

Be it enacted by the Legislature of West Virginia:

Section

1. Ritchie county authorized to expend funds.

Section 1. Ritchie County Authorized to Expend Funds.—The county court of Ritchie county, West Virginia, is hereby authorized and empowered to use all or so much as the court may designate of any unexpended or surplus funds in the general fund or in any special fund of said county for the purpose of encouraging and promoting agricultural and Four-H participation in the Ritchie county fair.

CHAPTER 214

(House Bill No. 572—By Mr. Sawyers)

(Passed March 6, 1963; in effect ninety days from passage. Approved by the Governor.)

AN ACT authorizing the county court of Summers county to expend surplus funds for the purpose of repairing, constructing, reconstructing, and maintaining county-owned buildings or property.
Be it enacted by the Legislature of West Virginia:

Section 1. Summers county authorized to expend surplus funds for the construction and maintenance of county buildings.

Section 1.—Summers County Authorized to Expend Surplus Funds for the Construction and Maintenance of County Buildings.—The county court of Summers county is hereby authorized and empowered to use any unexpended sums and surpluses, presently or hereafter existing, in the general fund or in any special fund of said county, for the purpose of creating a special fund for the repair, construction, reconstruction, or maintenance of any county-owned buildings or property.

CHAPTER 215

(House Bill No. 521—By Mr. Corder)

[Passed March 1, 1963; in effect from passage. Approved by the Governor.]

AN ACT authorizing the county court of Upshur county, West Virginia, to use unexpended funds of said county and any surpluses in the funds of said county and any funds derived from capital assets of the county for the purpose of repairing, improving, constructing, remodeling and reconstructing the courthouse and any other physical structures of the county and for the purchase of real estate for the county, and to expend for such purposes the fund or any part thereof so created.

Be it enacted by the Legislature of West Virginia:

Section 1. Upshur county authorized to create a special fund.

Section 1. Upshur County Authorized to Create a Special Fund.—The county court of Upshur county, West Virginia, is hereby authorized and empowered from year to year to use all or so much as the court may designate of any unexpended funds of said county and any surpluses in county funds and any existing surpluses or funds
7 derived from capital assets for the purpose of creating a
8 special fund for the repair and improvements of, re-
9 modeling of, and construction of additions to, the court-
10 house and other buildings and structures of said county
11 and for the purchase of additional real estate and to con-
12 struct or reconstruct, repair, maintain, and improve said
13 real estate or buildings thereupon.
14 The county court is hereby authorized and empowered
15 to expend for such purposes the fund so created.

Sec. 2. Retransfer of Funds.—In cases of emergency
2 and necessity the county court of Upshur county, by unani-
3 mous vote thereof, shall be empowered to retransfer
4 funds from the special fund herein created to the general
5 county fund.

CHAPTER 216
(House Bill No. 407—By Mr. Calendine)

[Passed March 9, 1963; in effect ninety days from passage.
Approved by the Governor.]

AN ACT to amend and reenact section twelve, chapter one
hundred ninety-nine, acts of the Legislature, regular ses-
sion, one thousand nine hundred fifty-nine, relating to
supplies, finances, seal, court rooms and offices for the
intermediate court of Wood county, West Virginia.

Be it enacted by the Legislature of West Virginia:

That section twelve, chapter one hundred ninety-nine, acts
of the Legislature, regular session, one thousand nine hundred
fifty-nine, be amended and reenacted to read as follows:

Section 12. Supplies; finances; seal; court rooms and offices.

Section 12. Supplies; Finances; Seal; Court Rooms and
2 Offices.—It shall be the duty of the county court of
3 Wood county to provide all record and other books and
4 stationery that may be necessary for said court. Like-
5 wise a seal for said court shall be provided and full faith
and credit shall be given to the records of the court and
certificates of its judge or clerk in like manner and with
the same effect as if the same were records of the circuit
court similarly authenticated. The county court of Wood
county shall likewise furnish such rooms, furniture and
equipment for the proper conduct and administration of
said court and shall, through annual levy and appropri-
ations, make provision for the payment for all such rooms,
supplies and equipment. It shall be the duty of the county
court of Wood county to pay the salary of a full-time
secretary in the office of the judge of said court, to be
appointed by him, whose compensation shall be not less
than two thousand five hundred dollars nor more than
four thousand dollars annually, to be determined by the
judge.

CHAPTER 217
(House Bill No. 230—By Mr. Speaker, Mr. Singleton,
and Mr. Wilt)

[Passed February 18, 1963; in effect July 1, 1963. Approved by the Governor.]

AN ACT to repeal chapter one hundred twenty-eight, acts of
the Legislature, regular session, one thousand nine hundred
forty-five, relating to the establishment of a capitol salvage
committee, and to provide for the transfer of any unex-
pended balance remaining in the special revenue account
established by said chapter to the general revenue fund.

Be it enacted by the Legislature of West Virginia:

Section 1. Repealing act creating special salvage committee; transfer of funds.

Section 1. Repealing Act Creating Special Salvage
Committee; Transfer of Funds.—Chapter one hundred
twenty-eight, acts of the Legislature, regular session, one
thousand nine hundred forty-five, is hereby repealed, and
any unexpended balance remaining in the special revenue
account established under the provisions of said chapter
are hereby transferred to the general revenue fund.
AN ACT creating a public corporation to be known as the Middle Island Creek Development Authority; specifying the purposes of the authority; providing for the government, operation and management of the authority; providing for the appointment and compensation of the members of the board of directors of the authority; specifying the powers of the authority; authorizing the issuance of notes, bonds and other securities by the authority and the giving of security for the payment thereof; providing that the authority shall be tax exempt; authorizing the county courts of Doddridge, Pleasants and Tyler counties to make contributions of money and other property to the authority; providing for the accounting of the funds of the authority; and providing for the covering of employees of the authority by workmen's compensation.

Be it enacted by the Legislature of West Virginia:

Section 1. Middle Island Creek Development Authority Authorized.—There is hereby created a public corporation, to be known and designated as the Middle Island Creek Development Authority, for the purposes and with the authority hereinafter set forth.
Sec. 2. Geographic and Territorial Limits of the Authority.—The authority is hereby authorized to do and perform all acts, consistent with the purposes as hereinafter set forth, within that portion of the watershed basin of Middle Island Creek and its tributaries located within the boundaries of the counties of Doddridge, Pleasants and Tyler.

Sec. 3. Public Corporation’s Authority.—The authority is authorized to develop the watershed basin of Middle Island Creek for any of the following purposes:

a. Recreational areas and recreation.
b. Tourist facilities and promotion of tourism within the area.
c. Preventing floods.
d. Arresting erosion.
e. Regulating the flow of streams and conserving the water thereof.
f. Regulating stream channels by changing, widening and deepening the same.

Sec. 4. Government, Operation and Management of the Authority.—The government, management and operation of the authority, its property, operations, business and affairs, shall be lodged in a board of directors composed of three persons, one each appointed by the county courts of Doddridge, Pleasants and Tyler counties, who shall be residents of the respective counties. Within thirty days after the effective date of this act, the county court of Doddridge county shall appoint one of said directors for a term of three years; the county court of Pleasants county shall appoint one of said directors for a term of five years; and the county court of Tyler county shall appoint one of said directors for a term of seven years. At the expiration of their respective terms of office, appointments shall be made by the county court whose appointee is vacating his office for terms of five years. Any vacancy shall be filled forthwith by the respective county court who originally filled the office for which the vacancy exists, for the unexpired term. A member may be re-appointed for such additional term or terms as the county court may deem proper. Members in office at the expira-
tion of their respective terms shall continue to serve until their successors shall have been appointed and qualified. The county court may at any time remove its appointee to said board of directors for good cause shown, and may appoint a successor member for said removed member. No member of the board of directors shall be a public officer, public official, candidate for public office, or employee of any public officer or public official, and any board member shall automatically vacate his office when he belongs to one of the above prohibited classifications.

Sec. 5. Compensation of Directors.—No member of the board of directors shall receive any compensation, whether in form of salary, per diem allowance or otherwise, for or in connection with his services as such member, but each member shall be entitled to reimbursement for any necessary expenditures in connection with the performance of his general duties as such member.

Sec. 6. Authority to Be a Public Corporation.—The authority and the members thereof shall constitute and be a public corporation under the name provided for in section one, and as such shall have perpetual succession, may contract and be contracted with, sue and be sued, and have and use a common seal.

Sec. 7. Powers.—The development authority is hereby given power and authority as follows: (1) To make and adopt all necessary by-laws, rules and regulations for its organization and operations not inconsistent with law; (2) to elect its own officers, to appoint committees and to employ and fix compensation for personnel necessary for its operation; (3) to enter into contracts with any person, agency, governmental department, firm or corporation, including both public and private corporations, and generally to do any and all things necessary or convenient for the purpose of promoting, developing and advancing the recreational facilities of the counties in which it is intended to operate; (4) to delegate any authority given to it by law to any of its officers, committees, agents or employees; (5) to apply for.
receive and use grants-in-aid, donations and contributions from any source or sources, and to accept and use bequests, devises, gifts and donations from any person, firm or corporation; (6) to acquire lands and hold title thereto in its own name; (7) to purchase, own, hold, sell and dispose of personal property and to sell, lease or otherwise dispose of any real estate which it may own; (8) to borrow money and execute and deliver negotiable notes, mortgages, bonds, debentures, and other evidences of indebtedness therefor, and give such security therefor as shall be requisite, including giving a mortgage or deed of trust on its real or personal property and facilities in connection with the issuance of mortgage bonds; (9) to raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article four-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, it being hereby expressly provided that a development authority created under this act is a “municipal authority” within the definitions of that term as used in said article four-a, chapter eight of the code; and (10) to expend its funds in the execution of the powers and authority herein given.

Sec. 8. Indebtedness of the Authority.—The authority may incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with carrying out its purposes as hereinbefore mentioned. No statutory limitation with respect to the nature or amount of indebtedness which may be incurred by municipalities or other public bodies shall apply to indebtedness of the authority. No indebtedness of any nature of the authority shall constitute an indebtedness of the county courts of the counties in which the commission is intended to operate or any municipality situate therein, or a charge against any property of any of the county courts, municipalities, or other appointing agencies. The rights of creditors of the authority shall be solely against the authority as a corporate body and shall be satisfied only out of property held by it in its corporate capacity.
Sec. 9. Agreement in Connection with Obtaining Funds.

The authority may, in connection with obtaining funds for its purposes, enter into any agreement with any person, firm or corporation, including the federal government, or any agency or subdivision thereof, containing such provisions, covenants, terms and conditions as the authority may deem advisable.

Sec. 10. Property, Bonds and Obligations of Authority Exempt from Taxation.—The authority shall be exempt from the payment of any taxes or fees to the state or any subdivision thereof or to any officer or employee of the state or other subdivision thereof. The property of the authority shall be exempt from all local and municipal taxes. Bonds, notes, debentures and other evidences of indebtedness of the authority are declared to be issued for a public purpose and to be public instrumentalities, and shall be exempt from taxes.

Sec. 11. Participation and Appropriations Authorized.—The county courts of the counties of Doddridge, Pleasants and Tyler are hereby authorized and empowered to appoint members of the said authority and such county courts and any municipalities therein, or any one or more of them, jointly and severally, are hereby authorized and empowered to contribute by appropriation from their respective general funds not otherwise appropriated to the cost of the operation and projects of the authority.

Such county courts or municipal corporations therein are hereby authorized and empowered to transfer and convey to the said authority property of any kind hereafter acquired by said county courts or municipal corporations for or adaptable to use in industrial and economic development, such transfers or conveyances to be without consideration or for such price and upon such terms and conditions as said county courts or municipal corporations shall deem proper.

Sec. 12. Funds and Accounts of the Authority.—Contributions made to the authority from time to time by the county courts of the counties of Doddridge, Pleasants
and Tyler, or any municipal corporation therein, and by any persons, firms or corporations which shall desire to do so, and all other funds received by the authority, shall be deposited in such bank or banks as the authority may direct and shall be withdrawn therefrom in such manner as the authority may direct. The authority shall keep strict account of all its receipts and expenditures and shall each quarter make a quarterly report to the county courts of such counties containing an itemized statement of its receipts and disbursements during the preceding quarter. Within sixty days after the end of each fiscal year, the authority shall make an annual report containing an itemized statement of its receipts and disbursements for the preceding year, and such annual report shall be published once a week for two successive weeks in two newspapers of opposite politics of general circulation in such counties. The books, records and accounts of the authority shall be subject to audit and examination by the office of the state tax commissioner of West Virginia and by any other proper public official or body in the manner provided by law.

Sec. 13. Sale or Lease of Property.—In the event the board of the authority shall so determine, the authority may lease or sell all of its property and equipment on such terms and conditions as the authority may fix and determine. Upon dissolution of the authority, all of its assets and property shall revert to and become the property of the counties for which said authority was created.

Sec. 14. Employees to Be Covered by Workmen’s Compensation.—All eligible employees of the authority shall be deemed to be within the workmen’s compensation act of West Virginia, and premiums on their compensation shall be paid by the authority as required by law.

Sec. 15. Liberal Construction of Act.—It is the purpose of this act to provide for the promotion, development and advancement of the business prosperity and economic welfare of the counties of Doddridge, Pleasants and Tyler, and this act shall be liberally construed to effect such purpose.
Sec. 16. Provisions Severable.—The several sections and provisions of this act are severable, and if any section or provision hereof shall be held unconstitutional, all the remaining sections and provisions of this act shall nevertheless remain valid.

CHAPTER 219

(House Bill No. 86—By Mr. Speaker, Mr. Singleton, and Mr. Boiarisky)

[Passed February 6, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, chapter one hundred thirty-eight, acts of the Legislature, regular session, one thousand nine hundred sixty-one, relating to the creation of the “West Virginia Centennial Fund”.

Be it enacted by the Legislature of West Virginia:

That section three, chapter one hundred thirty-eight, acts of the Legislature, regular session, one thousand nine hundred sixty-one, be amended and reenacted to read as follows:

Section

3. Creation of the West Virginia centennial fund.

Section 3. Creation of the West Virginia Centennial Fund.—For the purpose of carrying out the provisions of this act, there is hereby created a special revenue fund entitled “The West Virginia Centennial Fund,” which fund shall remain in existence only to the end of the fiscal year, one thousand nine hundred sixty-four.

The commission shall have the duty of administering, managing and controlling said fund and shall make expenditures therefrom in accordance with the provisions of article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended. Requisitions for expenditures from said fund shall be signed by either the chairman or vice chairman of the commission, secretary, treasurer or comptroller. All such
requisitions shall require the signature of two such officers.

The commission is authorized to receive annual appropriations from the Legislature of West Virginia and from counties and municipalities within the state. County courts and municipalities are hereby authorized and empowered to make appropriations to the commission as a budget expenditure; and, notwithstanding the provisions of section twenty-six, article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, or any other law which may be to the contrary, county courts and municipalities are hereby authorized to appropriate to the commission funds in excess of the amount needed for the purpose for which such funds were raised:

Provided, That under no circumstances shall a county court or municipality expend money in excess of the funds available for current expenses. The commission is empowered to allow such annual appropriations to accumulate until such time as it becomes necessary to make expenditures therefrom. The commission is further authorized and empowered to solicit, encourage and request tax-deductible donations, gifts and contributions from any source, both private and public.

All money so appropriated or received shall be turned over to the nonprofit corporation authorized herein.
RESOLUTIONS

(Only resolutions of general interest adopted by the Legislature and the two Houses thereof during the 1963 Regular Session are included in this volume. Resolutions dealing with organization of the Legislature and other routine business, upon which action has been completed, will be found in the Journals of the Session.)

HOUSE CONCURRENT RESOLUTION NO. 10
(Originating in the House Committee on Finance)
[Adopted January 24, 1963.]

Requesting the Commissioner of Public Institutions to establish a book repair industry at the penitentiary.

WHEREAS, The problem of idleness at the West Virginia penitentiary is generally recognized as being a critical one; and

WHEREAS, The establishment of a book repair industry would provide employment for one hundred to one hundred fifty men who are now idle; and

WHEREAS, Vocational training is an essential part of any program of rehabilitation; and

WHEREAS, The books in the libraries of the various county school systems have to be repaired and rebound from time to time; and

WHEREAS, Other states which have operated such a facility have achieved substantial savings in the cost of having such books repaired and rebound by such book repair industries; and

WHEREAS, Not only the inmates at the penitentiary but also the State as well would profit from the establishment of such an industry; therefore, be it

Resolved by the Legislature of West Virginia:

That the Commissioner of Public Institutions is hereby requested to investigate the feasibility of establishing such an industry at the penitentiary and to establish and operate such an industry if such a program appears feasible.
ADOPTING "THE WEST VIRGINIA HILLS", "WEST VIRGINIA, MY HOME SWEET HOME" AND "THIS IS MY WEST VIRGINIA" AS OFFICIAL STATE SONGS.

WHEREAS, Prior to the year 1947, the State of West Virginia was without an official state song; and

WHEREAS, The forty-eighth Legislature in 1947 considered it desirable to have official state songs and did by resolution designate "West Virginia, My Home Sweet Home" as one of the official state songs; and

WHEREAS, The fifty-fifth Legislature in 1961, without knowledge of the fact that "West Virginia, My Home Sweet Home" had previously been designated as one of the official state songs, did designate "The West Virginia Hills" as the official state song; and

WHEREAS, It is still deemed desirable to have official state songs; and

WHEREAS, "The West Virginia Hills" and "West Virginia, My Home Sweet Home" are still regarded as admirably suited for such purpose; and

WHEREAS, "This Is My West Virginia", with words and music by Mrs. Iris Bell, has been designated the official Centennial song, and is a poem of love for the State and people of the State; and it is felt by all those who have heard "This Is My West Virginia" and "West Virginia, My Home Sweet Home", that they should each be named official songs of the State; therefore, be it

RESOLVED BY THE LEGISLATURE OF WEST VIRGINIA:

That the composition known as "The West Virginia Hills", original version, with words by Mrs. Ellen King and music by H. E. Engle, is designated one of the official state songs of the State of West Virginia, the composition known as "This Is My West Virginia", with words and music by Mrs. Iris Bell, is designated one of the official state songs of the State of West Virginia, and "West Virginia, My Home Sweet Home", with
words and music by Julian G. Hearne, Jr., is redesignated one of the official state songs, each ranking equally with the others in official status and each to rank equally with any other composition which in the future may be designated as an official state song.

HOUSE CONCURRENT RESOLUTION NO. 20
(By Mr. Cann and Mr. Boiarsky)
[Adopted March 4, 1963.]
Creating a special interim committee to make a comprehensive study of all executive and administrative offices, departments and instrumentalities of the state government, other than the Board of Governors of West Virginia University and Potomac State College and the West Virginia Board of Education, for the purpose of allocating by law their respective functions, powers and duties to assure the most economical and efficient operation of state government and to provide the maximum efficiency, economy and fidelity in the operation of government.

WHEREAS, The West Virginia Commission on Constitutional Revision, established pursuant to Senate Concurrent Resolution No. 5, West Virginia Legislature, regular session, one thousand nine hundred fifty-seven, in proposing a revision of article seven of the State’s Constitution, relating to the executive department, recommended that, except for the offices of Governor, Attorney General and Auditor, and the governing boards of institutions of higher education, the number of principal departments in the executive branch be limited to not more than twenty, and that the Legislature be required to allocate the eighty-odd departments, bureaus and other agencies among and within the twenty or less principal departments; and

WHEREAS, Many state departments, boards and commissions now in existence have been established through acts of the Legislature and not by the Constitution of the State of West Virginia; and

WHEREAS, The creation of these various agencies has increased in magnitude and complexity as the service requirements of the State have increased, and as a consequence duplication of duties and fiscal operations has occurred among a
number of constitutional and statutory bodies in the state government, resulting in a decentralization of related functions and diffusion of responsibility which has meant not only duplication in the operation of government, but also an inability to focus responsibility for the most effective and economical operation of state government; and

WHEREAS, To assure the most economical and efficient operation of state government and to provide the maximum efficiency, economy and fidelity in the operation of government, a plan for the reorganization of the various executive and administrative offices, departments and instrumentalities of the state government insuring the consolidation of the overlapping functions of these agencies is urgently necessary; and

WHEREAS, Nearly all of the executive and administrative structure of state government has been created by legislative action which should be reorganized irrespective of the fact that the proposed amendment to the Constitution providing for the Legislature to consolidate the functions, powers and duties of the various executive and administrative departments and instrumentalities of state government was not adopted; therefore, be it

Resolved by the Legislature of West Virginia:

That there be created a special committee consisting of the Governor, as chairman, the Auditor and the Attorney General, and a Democratic and Republican member of the State Senate appointed by the President of the Senate, and a Democratic and Republican member of the House of Delegates, appointed by the Speaker of the House; and that this committee be requested and directed to make a comprehensive study of all executive and administrative offices, departments and instrumentalities of the state government, other than the Board of Governors of West Virginia University and Potomac State College and the West Virginia Board of Education, for the purpose of allocating their respective functions, powers and duties in such manner as to group the same according to major practices so far as practicable to assure the most economical and efficient operation of state government and to provide the maximum efficiency, economy and fidelity in the operation of government; and, be it
Further Resolved, That the committee may make such reports to the members of the Legislature by mail from time to time as it shall deem advisable and shall on or before the convening of the regular session of the Legislature in the year one thousand nine hundred sixty-four make an interim report by mail to the members of the Legislature embracing its findings and recommendations at that time; and not later than the second week after the convening of the regular session of the Legislature in the year one thousand nine hundred sixty-five, the committee shall make a final report to the Legislature, and shall include in the report such findings and recommendations as it shall deem pertinent and necessary to effect such consolidation of the administrative structure of state government, and shall further include in such report drafts of any proposed legislation which it shall deem necessary to carry the recommendations of the committee into effect; and, be it

Further Resolved, That the committee is authorized to employ such advisory assistance and other personnel as it may deem advisable and also to employ such clerical and stenographic personnel as may be necessary in the proper performance of its duties, and to fix reasonable compensation and expenses of such persons as may be employed, and to reimburse the legislative members of the committee for their expenses, all such compensation and expenses to be within the amount made available by the appropriations under account number one hundred three for joint expenses.

HOUSE CONCURRENT RESOLUTION NO. 22
(By Mr. Wilson)
[Adopted February 27, 1963.]

Requesting the State Board of Education to prepare and submit to this Legislature a plan which will provide for a system of community post-high school vocational training facilities in West Virginia.

Whereas, According to our Constitution, our people have a right to the privileges of education, and it is the duty of the State to provide for a thorough and efficient system of education; and
WHEREAS, The State must make appropriate post-high school educational opportunities available to all its citizens who have the ability and the ambition to benefit from them; and

WHEREAS, Much has been said about our philosophical commitment to public education beyond the high school without fulfilment; and

WHEREAS, Possibly half of the youth of West Virginia do not complete high school, and possibly one fourth only seek any formal education beyond the twelfth grade, and possibly one fifth of our youth enter college, and less than one tenth complete four years of college study; and

WHEREAS, So long as this condition obtains there is unfinished business for all of public education in our State; and

WHEREAS, In this day and time some kind of educational training beyond high school is essential to any sort of profitable employment, West Virginia cannot afford the "economy" of failure to provide for substantial vocational educational training for both graduates and nongraduates of high school; and

WHEREAS, Within our State located within commuting distance geographically over our State in reasonable locations there exist facilities that can easily be developed for this purpose; and

WHEREAS, West Virginia has recognized reasonably well its responsibility for public school education and for higher education through colleges and universities and apparently neglected vocational training that would reclaim for responsible positions most of that vast army of our boys and girls who may never be economically able to enter college and who may be denied simple vocational training for useful careers; therefore, be it

Resolved by the Legislature of West Virginia:

That the State Board of Education be requested to prepare and submit a plan to this Legislature which will provide for a system of two-year community post-high school vocational training for both graduates and nongraduates of high school who have the ability and the ambition to benefit therefrom; and, be it
Further Resolved, That the facilities of institutions of higher learning in our State in strategic locations, properly designated as to convenience in relation to population and commuting distance, be considered and be made available for rendering such service; and, be it

Further Resolved, That the facilities at Bluefield State College, among others, would seem to be well adapted by proper alterations along with other educational institutions for this purpose, and it is suggested that such institutions receive proper consideration; and, be it

Further Resolved, That the facilities and classes of existing institutions be made available for integration without distinction, except recognition of nongraduates in this type of training; and, be it

Further Resolved, That the system be so developed as to include certificates at the end of the period of training; and, be it

Further Resolved, That further details for the inclusion of this field of instruction be incorporated into the total system of education in our State and be embodied in such plan.

HOUSE CONCURRENT RESOLUTION NO. 24
(By Mr. Bedell)
(Adopted February 21, 1963.)

Making Sir Winston Churchill an honorary citizen of the State of West Virginia.

WHEREAS, Sir Winston Churchill, a citizen of Great Britain by birth, has close ties with the United States of America; and

WHEREAS, Said Sir Winston Churchill has demonstrated during the strife and turmoil of two World Wars that he is a friend and ally of the United States; and

WHEREAS, He also has demonstrated his loyalty and devotion to the aims, purposes and aspirations of this Nation at peace conferences, world trade meetings, the United Nations and elsewhere; and
WHEREAS, There is now a proposal before the Congress that he be made an honorary citizen of the United States; and

WHEREAS, It is appropriate that this great soldier, world statesman and noted historian and writer be made a citizen of our State prior to being made an honorary citizen of the United States; therefore, be it

Resolved by the Legislature of West Virginia:

That said Sir Winston Churchill be made an honorary citizen of West Virginia and that the Congress of the United States be memorialized to award him honorary citizenship as an American.

HOUSE CONCURRENT RESOLUTION NO. 37
(By Mr. Speaker, Mr. Singleton, and Mr. Brotherton)
[Adopted March 8, 1963]

Creating a commission to study salaries of state officials and employees and make recommendations with respect thereto.

WHEREAS, Salaries of elective and appointive state officials and employees constitute an important and major problem for consideration and action by the Legislature; and

WHEREAS, In order to act fairly and intelligently upon the question of proper salaries for state officials and employees, the Legislature is in need of various facts based upon findings of an impartial body through the utilization of competent channels of research and the examination of available factual data; and

WHEREAS, There are indications that some salaries are inadequate; that there is a wide discrepancy between salaries paid by the various spending units, that there are not adequate standards provided for qualifications of employees; and representations that some departments of state government are overstaffed while others do not have sufficient personnel to adequately discharge their proper functions and render essential services; therefore, be it

Resolved by the Legislature of West Virginia:
That there is hereby created a commission consisting of fifteen representative citizens of the State, five to be appointed by the President of the Senate, five to be appointed by the Speaker of the House of Delegates, and five to be appointed by the Governor, to be known as the "State Salary Study Commission". Not more than three members appointed by each appointing authority shall be members of the same political party. Vacancies on the commission shall be filled by the original appointive authority.

Representative citizens shall include persons with experience in governmental matters, students of government, persons with experience in employment of personnel in business and industry and with knowledge of present-day wage schedules in industry as well as persons with generally sound judgment.

The commission shall elect one of its members as chairman and such other officers as it shall deem appropriate. It may employ such consulting services and advisory and clerical personnel as it may deem necessary to properly discharge its responsibilities and duties as directed by this resolution. The commission shall meet at such times and places as it may determine.

The members of the commission shall serve without compensation, but shall be entitled to reimbursement for travel and other expenses incurred in the discharge of their duties. Such expenses as well as expenses for consulting, advisory, clerical and other personnel shall be paid from the legislative appropriation for "other authorized legislative committees".

It shall be the duty of the commission:

1. To make a thorough study of salaries of all elective and appointive state officials, including judges of the circuit courts, and of employees of the various spending units of the State, including all classes of institutions, as well as the various departments, commissions, boards and agencies;

2. To as far as practicable compare present salaries of such officials and employees with those paid in other states and for comparable services in private employment;
3. To study the personnel needs of the various spending units; and

4. Report its factual findings, conclusions and recommendations to the Legislature covering the factors outlined in this resolution.

The commission may make progress reports to the members of the Legislature from time to time if it deems such action advisable, and shall make a final report to the Legislature not later than January 20, 1964.

It shall be the duty of all departments, commissions and agencies of the state government to cooperate fully with the commission and to furnish it any information, records and facts requested. The commission shall have the right to examine records and papers of the various spending units of the state government.

HOUSE JOINT RESOLUTION NO. 10
(By Mr. Speaker, Mr. Singleton, and Mr. Brotherton)
(Adopted March 7, 1963.)

Proposing an amendment to the Constitution of the State of West Virginia, authorizing the issuing and selling of state road bonds in an amount not exceeding two hundred million dollars, and revoking authority to issue and sell bonds under the Good Roads Amendment of 1920 on and after January 1, 1963.

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 general election to be held in the year 1964, which proposed amendment is as follows:

The Legislature shall have power to authorize the issuing and selling of state bonds not exceeding in the aggregate two hundred million dollars. The proceeds of said bonds hereby authorized to be issued and sold shall be used and appropriated
solely for the building and construction of state roads and highways provided for by this Constitution and the laws enacted thereunder. Such bonds may be issued and sold in amounts not to exceed twenty million dollars in any fiscal year. When a bond issue as aforesaid is authorized, the Legislature shall, at the same time provide for the collection of an annual state tax sufficient to pay as it may accrue the interest on such bonds and the principal thereof within and not exceeding twenty-five years. Such tax shall be levied in any year only to the extent that the moneys in the state road fund irrevocably set aside and appropriated for and applied to the payment of the interest on and principal of said bonds becoming due and payable in such year are insufficient therefor.

The authority to issue and sell and have outstanding additional bonds granted by the amendment to the Constitution proposed by Senate Joint Resolution No. 15, adopted February 15, 1919, and afterwards ratified by a vote of the people, is hereby revoked as of January 1, 1965, but said amendment shall in all other respects remain in full force and effect.

HOUSE RESOLUTION NO. 26
(By Mr. Speaker, Mr. Singleton, and Mr. Seibert)
[Adopted March 7, 1963.]

Amending House Rule 92, relating to introduction of bills.

Resolved by the House of Delegates:

That House Rule 92 be amended by adding thereto the following:

All bills to be introduced in the House, which either increase or decrease the revenue or fiscal liability of the State, or in any manner change or modify any existing tax or rate of taxation, shall have attached thereto a “fiscal note” which said fiscal note shall contain information as suggested in forms set forth in “Manual For the Preparation of Fiscal Notes to Legislative Bills Introduced in the House of Delegates”, which manual shall be prepared and adopted by the Committee on Rules.
HOUSE RESOLUTION NO. 29
(Originating in the House Committee on the Judiciary)
[Adopted March 6, 1963.]

Requesting all legislation prepared by or on behalf of departments and agencies of state government be prepared in advance of the session of the Legislature, in accordance with the House Rules, and be introduced during the first two weeks of the session of the Legislature, and directing the Clerk to deliver or mail copies of this resolution to the heads of every department and agency of state government.”

WHEREAS, There were introduced in the 1963 Regular Session of the House of Delegates 578 bills; and

WHEREAS, A great volume of legislation presented at each session of the Legislature is on behalf of the various departments and agencies of the State of West Virginia; and

WHEREAS, Much of such legislation was introduced late in this session of the Legislature; and

WHEREAS, The departments and agencies of the State of West Virginia have sufficient time in which to carefully study and draft legislation in which it is interested prior to the convening of the Legislature; and

WHEREAS, It would be extremely helpful to the Legislature and in the best interest of the people of the State of West Virginia if the legislation to be introduced on behalf of state departments and agencies were introduced during the first two weeks of the session; therefore, be it

Resolved by the House of Delegates:

That it is requested that, where reasonably practicable, all legislation prepared by or on behalf of departments and agencies of state government be prepared in advance of the session of the Legislature, in accordance with the House Rules, and be introduced during the first two weeks of the session of the Legislature; and, be it

Further Resolved, That a copy of this resolution be delivered or mailed by the Clerk of the House of Delegates to the heads of every department and agency of state government.
Directing the Joint Committee on Government and Finance and the Commission on Interstate Cooperation to conduct a study to determine whether a general public building code for the State, incorporating provisions for fire safety, general safety and welfare of public building occupants, and provisions governing materials used in construction, would be desirable, and if so, to draft such general public building code.

WHEREAS, Current public construction in West Virginia is governed by numerous rules, regulations, and national codes; and

WHEREAS, The West Virginia departments of education, health and labor, and the fire marshal's office have statutory responsibility to establish standards regarding the construction of public buildings; and

WHEREAS, The afore-mentioned four agencies of state government in carrying out their respective responsibilities have established standards which are frequently inconsistent, thus causing confusion, delay and expense in planning and constructing public facilities; and

WHEREAS, It appears desirable to provide a central source of information and uniform guide lines respecting plans and specifications for public buildings; and

WHEREAS, Many states have adopted building codes applicable to all public construction throughout their respective states; and

WHEREAS, It appears that the adoption of a public building code by this State might well reduce the general confusion, delay and expense now existing in planning and constructing public buildings and provide a guide for minimum requirements and acceptable technical standards for state and local authorities contemplating the adoption of building codes for public buildings; therefore, be it
Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance and the Commission on Interstate Cooperation be hereby directed to conduct a study to determine whether a public building code for the State of West Virginia, incorporating provisions for fire safety, for the general safety and welfare of building occupants, for materials and techniques used in construction, and for any other matters deemed appropriate, would be desirable, and if so, to draft such public building code; and, be it

Resolved Further, That a final report containing the conclusions and recommendations of the committee and commission and any proposed draft of the afore-mentioned public building code be submitted to the Legislature prior to the convening of its regular session, one thousand nine hundred sixty-five; and, be it

Resolved Further, That the expenses necessary to conduct such study and to prepare any such draft be paid from the legislative appropriations made to the Joint Committee on Government and Finance and the Commission on Interstate Cooperation; and, be it

Resolved Further, That, for the purposes of this resolution, "public buildings" are defined to be those into which there are put moneys of the State of West Virginia, or its subdivisions.

COMMITTEE SUBSTITUTE FOR SENATE CONCURRENT RESOLUTION NO. 15
(Originating in the Senate Committee on the Judiciary)
[Adopted March 4, 1963.]

Providing for a special interim committee to study the arrangement of judicial circuits, the need for a state-wide system of courts of concurrent and limited jurisdiction within said circuits, and to study the salaries of the judges of the circuit courts and such other courts now in existence or to be established in the future, and to report its findings and recommendations.
WHEREAS, The State is divided into twenty-nine judicial circuits; and

WHEREAS, Fourteen of the twenty-nine circuits are comprised of but one county each, six of two counties each, seven of three counties each, and two of four counties each; and

WHEREAS, The circuits range in area from two hundred eighty-six square miles in the sixth judicial circuit to two thousand eight hundred seven square miles in the eleventh judicial circuit; and

WHEREAS, The circuits vary in population from twenty-five thousand four hundred fourteen in the twenty-eighth judicial circuit to two hundred fifty-two thousand nine hundred twenty-five in the thirteenth judicial circuit; and

WHEREAS, The salaries of the judges of the circuit courts payable out of the state treasury are determined by the population of the circuit; and

WHEREAS, Judges of three of the circuits receive an annual salary from the State of twelve thousand two hundred dollars, the judge of one circuit eleven thousand two hundred dollars, the judges of eleven circuits ten thousand seven hundred dollars, and the judges of fourteen circuits ten thousand two hundred dollars; and

WHEREAS, There now exist in this State numerous courts of concurrent and limited jurisdiction within the various judicial circuits, and there may be a need for a state-wide system of courts of concurrent and limited jurisdiction within such judicial circuits; and

WHEREAS, Any county court or the Board of County Commissioners of Ohio County may pay the judge of the circuit court additional compensation, but the salary and additional compensation or combined contribution of the several county courts and board of commissioners shall not exceed eighteen thousand two hundred dollars; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That a special interim committee be established for the purpose of studying the arrangement of judicial circuits in the
State, the need for a state-wide system of courts of concurrent and limited jurisdiction within said circuits, and the salaries of the judges of the circuit courts and such other courts now in existence or to be established in the future, and for the purpose of recommending to the Legislature, before the convening of its regular session in the year one thousand nine hundred sixty-four, a plan for arranging the circuits on a rational basis, a plan for a state-wide system of courts of concurrent and limited jurisdiction within said circuits, taking into consideration, in both plans, area, population and other relevant factors, and a plan as to the salaries of the judges of the circuit courts and such other courts; and, be it

Resolved Further, That the special interim committee shall be composed of nine members, to be appointed as follows: Two members of the Senate appointed by the President; two members of the House of Delegates appointed by the Speaker; one person appointed by the Governor; two persons appointed by the President of the West Virginia State Bar; and two persons appointed by the President of the West Virginia Bar Association; and, be it

Resolved Further, That the members appointed to this special interim committee shall be compensated at the rate of twenty-five dollars per diem and shall have mileage at the rate of ten cents per mile.

SENATE CONCURRENT RESOLUTION NO. 20
(By Mr. Carson, Mr. President, and Mr. Carrigan)
(Adopted March 8, 1963.)

Declaring official colors for the State of West Virginia.

WHEREAS, The State of West Virginia is without official colors; and

WHEREAS, It is appropriate that in this centennial year, and hereafter, there be displayed official colors for this State; and

WHEREAS, Traditionally the colors of old gold and blue have unofficially been displayed as the colors of West Virginia; therefore, be it
Resolved by the Senate, the House of Delegates concurring therein:

That the colors of old gold and blue be now and hereafter designated and displayed as the official colors of the State of West Virginia.

SENATE CONCURRENT RESOLUTION NO. 29
(By Mr. McKown and Mr. Carrigan)
[Adopted March 1, 1963.]

Requesting and directing the Joint Committee on Government and Finance to study the elementary school program of the State and associated problems.

WHEREAS, The elementary school program is basic to the civic, economic and personal development of every person of this State; and

WHEREAS, The effectiveness of secondary, higher and extended education rest upon and require firm, sound and fundamental elementary school programs; and

WHEREAS, Studies and inquiries have been directed toward secondary and higher educational problems without corresponding emphasis upon the elementary school program; and

WHEREAS, There exists concern that elementary school programs may not adequately serve their purposes and the interest of the State and its citizens; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance of this Legislature is requested and directed to conduct a study dealing with all phases of the elementary school program and to determine how it might be revised to meet the needs of this State in terms of curricula, methodology, personnel, organization, administration and other matters as may be determined as related thereto; and said joint committee shall report to the Legislature not later than the tenth day of the regular session of said Legislature convening in January, one thousand nine
hundred sixty-five, with recommendations and reports of their findings.

COMMITTEE SUBSTITUTE FOR
SENATE CONCURRENT RESOLUTION NO. 33
(Originating in the Senate Committee on Banks and Banking)
[Adopted March 8, 1963.]

Directing the Joint Committee on Government and Finance to study the finance, credit and banking laws of the State and to make recommendations to the Legislature on improvements to said laws.

WHEREAS, Our existing finance, credit and banking laws were enacted many years ago when the economy of the State was predominantly agricultural and society was oriented toward a rural and even pastoral mode of living; and

WHEREAS, Our economy has moved in the direction of industrialization at an ever increasing rate and, with each year, more and more of our people are either moving out of the State to seek the financial advantages inherent in a more progressive economy or to the more urban areas of our own State for the same reason; and

WHEREAS, It is clear that the future of this State and the future well-being of its citizenry lies in developing the great economical potential of this State which would be possible only if the economic climate in general and the finance, credit and banking systems in particular were improved; and

WHEREAS, Most observers are agreed that the existing finance, credit and banking laws, including consumer’s credit, are in need of extensive revision and in their present form constitute a positive hindrance to our future economic progress; and

WHEREAS, There is at present no agreement as to what remedial legislation is needed; and

WHEREAS, This State can, with profit, utilize the experience of other states to guide our decision on what revisions are required in our finance, credit and banking laws; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:
That the Joint Committee on Government and Finance of the State Legislature be directed to study the laws of this State relating to banking, financing and the extension of credit in any form, including consumer's credit and any other financing method used in the State of West Virginia, and to make recommendations to the Legislature on the revision or amendment thereof; and, be it

Resolved Further, That the committee shall study the laws of other states relating to banking, financing and the extension of credit in any form, including consumer's credit and any other financing method in such states, for the purpose of determining what improvements can be made in our laws and with the view of making recommendations designed to provide the State of West Virginia with progressive and model laws on said subjects; and, be it

Resolved Further, That the committee shall make a report of its findings and recommendations on or before the convening of the regular session of the Legislature in the year one thousand nine hundred sixty-five, and shall accompany such report with drafts of any proposed legislation it may consider necessary to effectuate its recommendations; and, be it

Resolved Further, That the committee is authorized to employ such qualified specialists as it deems proper to carry out its functions and to fix reasonable compensation for such persons as may be employed.

SENATE CONCURRENT RESOLUTION NO. 36
(Originating in the Senate Committee on the Judiciary)
[Adopted March 8, 1963.]

Directing the Joint Committee on Government and Finance to conduct a study and compile a complete list of the statutes of this State requiring the publication and posting of legal notices and to make recommendations with respect thereto.

WHEREAS, There are numerous statutes requiring the publication and posting of legal notices at various costs; and

WHEREAS, There may be many instances in which such publi-
cation and posting may be eliminated within the requirements of due process; and

WHEREAS, There may be situations in which the number of times a notice is required to be published may be reduced; and

WHEREAS, There may be other instances in which the forms of such notices, which forms are prescribed by statute, may be shortened and otherwise altered so as to reduce the cost of publication of such notices; and

WHEREAS, The circumstances under which such notices are posted are often such that it is difficult to determine whether such notices have in fact been posted as required by law; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance be directed to conduct a study and compile a complete list of the various statutes of this State requiring the publication and posting of legal notices, with a view to determining whether there may be instances in which such publication and posting may be eliminated within the requirements of due process, to determining whether there may be situations in which the number of times a notice is required to be published may be reduced, to determining whether the forms of such notices may be shortened and otherwise altered so as to reduce the cost of publication thereof, and to determining whether the posting procedures provided by statute may be improved, and with a view to revising and standardizing the costs of legal advertising; and, be it

Resolved Further, That a final report containing the conclusions and recommendations of the Committee and any drafts of proposed legislation to carry such conclusions and recommendations into effect be submitted to the Legislature prior to the convening of its regular session, one thousand nine hundred sixty-five; and, be it

Resolved Further, That the expenses necessary to conduct such study and to prepare any such drafts of legislation be paid from the legislative appropriations made to the Joint Committee on Government and Finance.
SENATE CONCURRENT RESOLUTION NO. 41
(Originating in the Senate Committee on Finance)

[Adopted March 6, 1963.]  

Directing the Joint Committee on Government and Finance to make a study of the several retirement systems of the State, including their possible consolidation for administrative purposes, and other benefits accruing therefrom.

WHEREAS, At almost every session of the Legislature there are introduced various amendments to the existing different retirement laws of the State; and

WHEREAS, Earlier studies have almost invariably carried with the reports the firm recommendation of the committee, that no bills of this nature seeking any major changes in the present structure of the various laws be considered without having been previously submitted to an actuary and then submitted to the Legislature with a copy of the actuary's report attached; and

WHEREAS, Technical advisors have heretofore repeatedly included in their educational reports the information that some of the provisions in our teacher's retirement laws are ill-advised; and

WHEREAS, The effect of the provisions of some of the amendments would seem to favor one group of the membership in the system and possibly place another group at a disadvantage; and

WHEREAS, One proposal would seek to allow an entire group in one retirement system to transfer to another retirement system without the benefit of a study of the financial effect on the two funds involved; now, therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That, except for amendments related to minor changes not related to any appreciable change in the financial provisions of the retirement system, all drafted bills seeking amendments to the existing laws related to state retirement include an abstract of a qualified actuary familiar with our laws.
That the Joint Committee on Government and Finance make
or cause to be made an updated study of our several retire­
ment systems with a report on the effect and the advisability
of a consolidation of the existing and future systems, especially
with a view of possible lessening of the cost of administration
and the advantages and disadvantages of integration.

SENATE CONCURRENT RESOLUTION NO. 48
(By Mr. McCourt)
(Adopted March 9, 1963.)

Requesting the Joint Committee on Government and Finance
and the Commission on Interstate Cooperation to make a
study of the feasibility of the State providing medical and
hospital services for those persons qualified to receive any
form of medical and hospital assistance from the State
under present law and the regulations promulgated there­
under through arrangements with nonprofit hospital, medical,
and dental service corporations organized and
operating under the provisions of article twenty-four, chap­
ter thirty-three of the Code.

WHEREAS, The State provides medical and hospital services
for recipients of public assistance and medical assistance for
the aged by direct payment to vendors of the services; and

WHEREAS, In the calendar year of one thousand nine hundred
sixty-two, the State expended the sum of $5,269,025, thirty-five
per cent of which came from state appropriations and sixty­
five per cent of which from the federal government, to provide
medical and hospital services for recipients of public assistance,
and the sum of $2,609,408, thirty per cent of which came from
state appropriations and seventy per cent of which from the
federal government, to provide medical and hospital services
for recipients of medical assistance for the aged; and

WHEREAS, The State is presently expending approximately
$160,000 a week to provide medical and hospital services to
recipients of public assistance, and $60,000 a week to provide
medical and hospital services for recipients of medical assist­
ance for the aged; and

WHEREAS, If these average weekly expenditures continue, the
cost of the two programs for the calendar year one thousand
nine hundred sixty-three would be nearly $11,500,000; and

WHEREAS, It is reported that at least thirty-five per cent of
staff time of the Department of Welfare is devoted to the ad-
ministration of the medical assistance for the aged program,
which time has been diverted from the public assistance pro-
gram; and

WHEREAS, Three or four states have recently established lim-
ited programs providing medical and hospital assistance to
their residents through arrangements with hospital and medi-
cal service corporations; and

WHEREAS, Such arrangements, if adopted in this State, would
relieve the Department of Welfare of the burden of processing
payments to vendors of medical and hospital services; and

WHEREAS, The reported administrative costs of administering
health plans sponsored by hospital and medical service cor-
porations have been markedly low; and

WHEREAS, The State should explore all possible avenues of
providing the best medical and hospital service for welfare
recipients in the most efficient and least expensive manner;
therefore, be it

Resolved by the Senate, the House of Delegates concurring
therein:

That the Joint Committee on Government and Finance and
the Commission on Interstate Cooperation be directed to make
a study of the feasibility of the State providing medical and
hospital service for those persons qualified to receive any form
of medical and hospital assistance from the State under pres-
ent law and regulations promulgated thereunder through ar-
rangements with nonprofit hospital, medical and dental serv-
ice corporations organized and operating under the provisions
of article twenty-four, chapter thirty-three of the Code; and,
be it

Resolved Further, That such joint committee and commission
on or before the convening of the regular session of the Legisl-
lature in the year one thousand nine hundred sixty-four sub-
mit to the Legislature a report of its findings as a result of
such study, and include in such report such recommendations as it shall deem pertinent and necessary, together with drafts of any proposed legislation necessary to carry such recommendations into effect; and, be it

Resolved Further, That the expenses necessary to make such study and submit such report be paid from the legislative appropriations made to the Joint Committee on Government and Finance and the Commission on Interstate Cooperation.

**SENATE CONCURRENT RESOLUTION NO. 49**

(By Mr. Gainer)

[Adopted March 9, 1963.]

Creating a special interim committee to make a comprehensive study of stream pollution in West Virginia for the purpose of determining whether present legislation should be revised or additional legislation is needed to provide better water pollution abatement and control.

WHEREAS, The streams in West Virginia have been excessively polluted; and

WHEREAS, The streams furnish not only the water necessary for the population and industry of the State but can also contribute to its natural beauty; and

WHEREAS, There is considerable opinion that the present laws relating to water pollution need revision to provide for more effective abatement and control; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That there be created a special committee of the Legislature for the purpose of making a comprehensive study of the laws of this State, relating to water pollution and control and to report its findings and recommendations. The committee shall consist of five members of the House appointed by the Speaker of the House and five members of the Senate appointed by the President of the Senate. Vacancies on the committee shall be filled by the original appointive authority; and, be it
Resolved Further, That the committee shall invite competent advice and cooperation from the many segments of industry, and other interested citizens and groups; and, be it

Resolved Further, That the committee shall make such reports to the members of the Legislature by mail from time to time as it shall deem advisable and shall, not later than the second week after the convening of the regular session of the Legislature in the year one thousand nine hundred sixty-four, make a final report to the Legislature and shall include in its report such findings and recommendations as it shall deem pertinent and necessary and drafts of any proposed legislation which it shall deem necessary to carry the recommendations of the committee into effect; and, be it

Resolved Further, That the Governor be requested to include the subject matter of water pollution abatement and control in his call for the regular session of the Legislature convening in the year one thousand nine hundred sixty-four; and, be it

Resolved Further, That the committee is authorized to employ such clerical and stenographic personnel as may be necessary in the proper performance of its duties, and to fix reasonable compensation and expenses of such persons as may be employed, and a per diem of twenty-five dollars for each of the legislative members of the committee in reimbursement for their expenses for each day devoted to the performance of their duties hereunder, all such expenses and compensation to be within the amount made available by the appropriations under Account No. 103 for joint expenses.

SENATE JOINT RESOLUTION NO. 1
(By Mr. Carson, Mr. President)
[Adopted February 1, 1963.)

To ratify the proposed amendment to the Constitution of the United States relating to the qualification of electors.

Resolved by the Legislature of West Virginia:

That the following proposed amendment to the Constitution of the United States be ratified:
"ARTICLE ...........

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Sec. 2. The Congress shall have power to enforce this article by appropriate legislation.
AN ACT to make a supplementary appropriation of public moneys out of the state treasury for the state department of welfare.

Be it enacted by the Legislature of West Virginia:

Section 1. Supplementary Appropriation.—In addition and as a supplement to the appropriations made to the state department of welfare for the fiscal year ending June thirtieth, one thousand nine hundred sixty-three, by chapter one, acts of the Legislature, regular session, one thousand nine hundred sixty-two, and by section three, title II, chapter twelve, acts of the Legislature, regular session, one thousand nine hundred sixty-three, there is hereby appropriated from the state fund, general revenue, to the state department of welfare, conditionally upon the fulfillment of the provisions set forth in chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-one, the following additional sums of money for expenditure dur-
ing the fiscal year ending June thirtieth, one thousand nine hundred sixty-three, for the purposes hereinafter stated:

Department of Welfare

Acct. No. 405

Public Assistance Grant (Classified Aid) $457,000.00

This supplementary appropriation is based upon a determination by the board of public works, embodied in a statement submitted to the Legislature under date of the sixth day of May, one thousand nine hundred sixty-three, that there is unappropriated revenue available for the current fiscal year in excess of the amount appropriated by this act.

It is the purpose of this supplementary appropriation to provide additional funds to the state department of welfare that it may continue, without reduction, the aid to dependent children and work and training programs.
AN ACT to repeal section three, article two, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend said code by adding thereto a new chapter, designated chapter twenty-nine-a, relating to rule-making procedures of state agencies and administrative procedures generally; and providing for review of the determinations of state agencies.

Be it enacted by the Legislature of West Virginia:

That section three, article two, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said code be amended by adding thereto a new chapter, designated chapter twenty-nine-a, to read as follows:

CHAPTER 29-A. STATE ADMINISTRATIVE PROCEDURES.

Article
1. Definitions and Applications of Chapter.
4. Declaratory Rulings and Declaratory Judgments.
5. Contested Cases.
6. Appeals.
Article 1. Definitions and Application of Chapter.

Section
1. Definitions.
2. Application of chapter.

Section 1. Definitions.—For the purpose of this chapter:

(a) "Agency" means any state board, commission, department or officer authorized by law to make rules or adjudicate contested cases, except those in the legislative or judicial branches;

(b) "Person" includes individuals, partnerships, corporations, associations or public or private organizations of any character;

(c) "Rule" includes every regulation, standard, or statement of policy or interpretation of general application and future effect, including the amendment or repeal thereof, affecting private rights, privileges or interests, or the procedures available to the public, adopted by an agency to implement, extend, apply, interpret or make specific the law enforced or administered by it or to govern its organization or procedure, but does not include regulations relating solely to the internal management of the agency, nor regulations of which notice is customarily given to the public by markers or signs, nor mere instructions;

(d) "Rule making" means the agency process for the formulation, amendment or repeal of a rule;

(e) "Contested case" means a proceeding before an agency in which the legal rights, duties, interests or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing, but shall not include cases in which an agency issues a license, permit or certificate after an examination to test the knowledge or ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination, and shall not include rule making; and

(f) "Order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive or declaratory in form) by any agency of any matter other than rule making.
Sec. 2. Application of Chapter.—The provisions of this chapter shall not apply to rules relating to, or contested cases involving, public elections, the conduct of inmates of public institutions, the conduct of students at public schools or public educational institutions, the conduct of persons in military service or the receipt of public assistance.

The provisions of this chapter shall not apply in any respect whatever to the West Virginia board of probation and parole, the public service commission, the board of public works, the West Virginia board of education, and the board of governors of West Virginia University: Provided, That these named agencies shall comply with section one, article two of this chapter: Provided, however, That any rule promulgated by any such named agency on and after the effective date of this chapter shall not become effective unless and until two certified copies of such rule have been on file in the office of the secretary of state for sixty consecutive days.


Section 1. Filing Rules.—(a) Each agency shall compile and index all of its lawfully adopted rules which are in force on the effective date of this chapter and shall file in the office of the secretary of state two certified copies of such compilation and index. If any agency shall fail to file such certified copies on or before January one, one thousand nine hundred sixty-five, then the rules of such agency which are not so filed shall become void and unenforceable and shall be of no legal force and effect. The secretary of state shall keep a permanent register of such rules which shall be open to public inspection during the office hours of the secretary of state.

(b) The secretary of state shall prescribe by rule a standard size, format and numbering system for rules to be filed in his office, making exception where rules issued by other agencies cannot effectively convey necessary information within the size and format established. Rules pertaining to the size, format and numbering system is-
sued by the secretary of state under the authority of this section shall become effective thirty days after such rules have been included in the permanent register maintained by the secretary of state in accordance with this section. The secretary of state may refuse to accept for filing any rules which do not comply with this chapter or with his rules pertaining to size, format and numbering.

Sec. 2. Making Orders and Records Available.—Every agency shall publish or, pursuant to rules adopted in accordance with the provisions of this chapter, make available to public inspection all final orders, decisions and opinions in the adjudication of contested cases except those required for good cause to be held confidential and not cited as precedents. Save as otherwise required by statute, matters of official record shall, pursuant to rules adopted in accordance with the provisions of this chapter, be made available for public inspection.


Section

1. Rules of procedure required.
2. Notice must be given.
3. Submission of data, etc., concerning proposed rule.
4. Effective date of rules.
5. Emergency rules.
7. Publication of rules.

Section 1. Rules of Procedure Required.—In addition to other rule-making requirements imposed by law:

(a) Each agency shall adopt rules governing the formal and informal procedures prescribed or authorized by this chapter. Such rules shall include rules of practice before the agency, together with forms and instructions.

(b) To assist interested persons dealing with it, each agency shall so far as deemed practicable supplement its rules with descriptive statements of its procedures.

Sec. 2. Notice Must Be Given.—On and after the effective date of this chapter, no agency shall make any rule unless and until notice thereof has been given to all persons who, in the manner hereinafter provided in this section, have requested notice of any proposed rule. The notice
shall either contain the express terms of the proposed rule, or shall contain an informative summary thereof. The notice shall be given by mail as specified in section two, article seven of this chapter. The notice shall include a statement of the time, date and place at which interested persons may submit data, objections, suggested amendments, views, evidence and arguments orally or in writing concerning the proposed rule, and such notice must be given not less than thirty nor more than sixty days prior to the date fixed. The request by any person to receive notice shall be in writing and shall request the agency to notify him of any rule proposed by such agency during the calendar year in which the request is made. Each agency by rule may prescribe the form of such written request for notification, and may require an annual fee in an amount not to exceed one dollar to accompany each such written request. All such fees shall be deposited in the state treasury to the credit of the state general fund. An agency may, in its discretion, also publish the required notice, at the expense of the agency, in one newspaper of general circulation in the state, or, if the rule has only local application, in one newspaper of general circulation in the locality to which it applies. If an agency determines to give notice also by publication, the publication shall appear at least once. No rule hereafter adopted is valid unless adopted in substantial compliance with the provisions of this section.

Sec. 3. Submission of Data, etc., Concerning Proposed Rule.—On the date and at the time and place specified in the notice required by section two of this article an opportunity shall be afforded all interested persons to submit data, objections, suggested amendments, views, evidence and arguments orally or in writing concerning the proposed rule. The proposed rule may be adopted in the form in which it was proposed, or as amended after the submission of such data, etc., providing the amendments do not alter the main purpose of the rule as proposed.

Sec. 4. Effective Date of Rules.—After the effective date of this chapter, each rule lawfully adopted by any
agency after notice and after affording interested persons an opportunity to submit data, etc., as required by sections two and three of this article, shall not become effective unless and until two certified copies of such rule have been on file in the office of the secretary of state for thirty consecutive days.

Sec. 5. Emergency Rules.—If, in an emergency, the adoption of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare, an agency may promulgate the necessary rule, in which event the rule shall, notwithstanding the provisions of sections two, three and four of this article, become effective immediately. The agency’s finding of an emergency and a brief statement of the reasons therefor shall be filed with the rule. Notice of any such emergency rule shall forthwith be given as prescribed in section two of this article. No such rule shall remain in effect longer than ninety days unless there is compliance with all the provisions of sections two and three of this article.

Sec. 6. Petition for Adoption of Rules.—Any interested person may petition an agency requesting the promulgation, amendment or repeal of any rule. Each agency may prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition.

Sec. 7. Publication of Rules.—(a) The secretary of state shall, as soon as practicable after January one, one thousand nine hundred sixty-five, publish as to each agency, in pamphlet form, all rules adopted by such agency and on file in his office. All such pamphlets shall be supplemented or revised as often as necessary.

(b) The secretary of state shall publish a quarterly bulletin in which he shall set forth the text of all rules filed during the preceding quarter, excluding rules in effect on January one, one thousand nine hundred sixty-five.

(c) The secretary of state may in his discretion omit from the publication in pamphlet form or the quarterly bulletins rules the publication of which would be unduly
cumbersome, expensive or otherwise inexpedient, if such
rules are made available in printed or processed form on
application to the adopting agency, and if the publication
in pamphlet form or the quarterly bulletins contain a
statement stating the general subject matter of the rules
so omitted and stating how copies thereof may be ob-
tained.
(d) The quarterly bulletins and the pamphlet publi-
cations shall be made available upon request to officials
of this state free of charge, and to other persons at a
price fixed by the secretary of state to cover the cost
thereof and mailing costs. All moneys so received shall
be deposited in the state treasury to the credit of the state
general fund.

Article 4. Declaratory Rulings and Declaratory Judgments.
Section
1. Petition for declaratory rulings by agencies.
2. Declaratory judgment on validity of rule.

Section 1. Petition for Declaratory Rulings by Agen-
cies.—On petition of any interested person, an agency
may issue a declaratory ruling with respect to the ap-
plicability to any person, property or state of facts of
any rule or statute enforceable by it. A declaratory rul-
ing, if issued after argument and stated to be binding,
is binding between the agency and the petitioner on the
state of facts alleged, unless it is altered or set aside by
a court, but it shall not be binding on any other person.
Such ruling is subject to review before the court and
in the manner hereinafter provided for the review of
orders or decisions in contested cases. Each agency may
prescribe by rule the form for such petitions and the
procedure for their submission, consideration and dis-
position.

Sec. 2. Declaratory Judgment on Validity of Rule.—
(a) Any person, except the agency promulgating the rule,
may have the validity of any rule determined by insti-
tuting an action for a declaratory judgment in the circuit
court of Kanawha county, West Virginia, when it appears
that the rule, or its threatened application, interferes
with or impairs or threatens to interfere with or impair,
the legal rights or privileges of the plaintiff or plaintiffs. The agency shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the plaintiff or plaintiffs has or have first requested the agency to pass upon the validity of the rule in question.

(b) The court shall declare the rule invalid if it finds that the rule violates constitutional provisions or exceeds the statutory authority or jurisdiction of the agency or was adopted without compliance with statutory rule-making procedures or is arbitrary or capricious, or that, in the case of a rule adopted pursuant to section five, article three of this chapter, action under said section five was not justified.

(c) When the invalidity of a rule has been so declared, the agency shall, within thirty days after such declaratory judgment has been entered, acquiesce therein and modify or rescind such invalidated rule in accord with the requirement of such declaratory judgment unless the agency promptly, and in any event within such thirty-day period, notifies the plaintiff or plaintiffs of its intention to apply for an appeal to the supreme court of appeals from such declaratory judgment pursuant to section one, article six of this chapter. In the event such agency shall thereafter make timely application for such appeal, the acquiescence of the agency in the invalidity of such rule shall not be required until thirty days after timely applications for such appeal have been refused or within thirty days after the appeal has been dismissed or otherwise disposed of in the supreme court of appeals by an affirmance of the judgment invalidating said rule.

Article 5. Contested Cases.

Section 1. Notice Required; Hearing; Subpoenas; Records.—(a) In any contested case all parties shall be afforded an opportunity for hearing after at least ten days' written notice. The notice shall contain the date, time and place of the hearing and a short and plain state-
ment of the matters asserted. If the agency is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application a more definite and detailed statement shall be furnished. An opportunity shall be afforded all parties to present evidence and argument with respect to the matters and issues involved. The required notice must be given as specified in section two, article seven of this chapter.

All of the testimony and evidence at any such hearing shall be reported by stenographic notes and characters or by mechanical means. All rulings on the admissibility of testimony and evidence shall also be reported. The agency shall prepare an official record, which shall include reported testimony and exhibits in each contested case, and all agency staff memoranda and data used in consideration of the case, but it shall not be necessary to transcribe the reported testimony unless required for purposes of rehearing or judicial review. Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order or default. Each agency shall adopt appropriate rules of procedure for hearing in contested cases.

(b) For the purpose of conducting a hearing in any contested case, any agency which now has or may be hereafter expressly granted by statute the power to issue subpoenas or subpoenas duces tecum or any member of the body which comprises such agency may exercise such power in the name of the agency. Any such agency or any member of the body which comprises any such agency may exercise such power in the name of the agency for any party upon request. Under no circumstances shall this chapter be construed as granting the power to issue subpoenas or subpoenas duces tecum to any agency or to any member of the body of any agency which does not now by statute expressly have such power. When such power exists, the provisions of this section shall apply. Every such subpoena and subpoena duces tecum shall be served at least five days before the return date thereof, either by personal service made by any person over eighteen years of age or by registered or
certified mail, but a return acknowledgment signed by
the person to whom the subpoena or \textit{subpoena duces tecum} is directed shall be required to prove service by
registered or certified mail. All subpoenas and \textit{subpoenas duces tecum} shall be issued in the name of the agency,
as aforesaid, but any party requesting their issuance
must see that they are properly served. Service of sub-
poenas and \textit{subpoenas duces tecum} issued at the instance
of the agency shall be the responsibility of the agency.
Any person who serves any such subpoena or \textit{subpoena
duces tecum} shall be entitled to the same fee as sheriffs
who serve witness subpoenas for the circuit courts of
this state; and fees for the attendance and travel of wit-
nesses shall be the same as for witnesses before the cir-
cuit courts of this state. All such fees shall be paid by
the agency if the subpoena or \textit{subpoena duces tecum}
were issued, without the request of an interested party,
at the instance of the agency. All such fees related to
any subpoena or \textit{subpoena duces tecum} issued at the
instance of an interested party shall be paid by the party
who asks that such subpoena or \textit{subpoena duces tecum}
be issued. All requests by interested parties for sub-
poenas and \textit{subpoenas duces tecum} shall be in writing
and shall contain a statement acknowledging that the
requesting party agrees to pay such fees. Any such
agency may compel the attendance of witnesses and the
production of books, records or papers in response to
such subpoenas and \textit{subpoenas duces tecum}. Upon motion
made promptly and in any event before the time speci-
fied in a \textit{subpoena duces tecum} for compliance therewith,
the circuit court of the county in which the hearing is
to be held, or the circuit court in which the \textit{subpoena
duces tecum} was served, or the judge of either such
court in vacation, may grant any relief with respect to
such \textit{subpoena duces tecum} which either such court,
under the West Virginia rules of civil procedure for trial
courts of record, could grant, and for any of the same
reasons, with respect to a \textit{subpoena duces tecum} issued
from either such court. In case of disobedience or neglect
of any subpoena or \textit{subpoena duces tecum} served on any
person, or the refusal of any witness to testify to any mat-
ter regarding which he may be lawfully interrogated, the circuit court of the county in which the hearing is being held, or the judge thereof in vacation, upon application by such agency or any member of the body which comprises such agency, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from such circuit court or a refusal to testify therein. Witnesses at such hearings shall testify under oath or affirmation.

(c) Evidentiary depositions may be taken and read as in civil actions in the circuit courts of this state.

(d) All hearings shall be conducted in an impartial manner. The agency, any member of the body which comprises the agency, or any hearing examiner or other person permitted by statute to hold any such hearing for such agency, and duly authorized by such agency so to do, shall have the power to: (1) Administer oaths and affirmations, (2) rule upon offers of proof and receive relevant evidence, (3) regulate the course of the hearing, (4) hold conferences for the settlement or simplification of the issues by consent of the parties, (5) dispose of procedural requests or similar matters, and (6) take any other action authorized by a rule adopted by the agency in accordance with the provisions of article three of this chapter.

(e) Except where otherwise provided by statute, the hearing in any contested case shall be held in the county selected by the agency.

(f) Notwithstanding the provisions of subparagraph (a) of this section, upon request to the agency from any party to the hearing all reported testimony and evidence at such hearing shall be transcribed, and a copy thereof furnished to such party at his expense. The agency shall have the responsibility for making arrangements for the transcription of the reported testimony and evidence, and such transcription shall be accomplished with all dispatch.

Sec. 2. Rules of Evidence; Official Notice.—(a) In contested cases irrelevant, immaterial, or unduly repeti-
tious evidence shall be excluded. The rules of evidence as applied in civil cases in the circuit courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Agencies shall be bound by the rules of privilege recognized by law. Objections to evidentiary offers shall be noted in the record. Any party to any such hearing may vouch the record as to any excluded testimony or other evidence.

(b) All evidence, including papers, records, agency staff memoranda and documents in the possession of the agency, of which it desires to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

(c) Every party shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.

(d) Agencies may take notice of judicially cognizable facts. All parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

(e) Upon motion in writing served by any party as notice may be served pursuant to section two, article seven of this chapter and therein assigning error or omission in any part of any transcript of the proceedings had and testimony taken at any such hearing, the agency shall settle all differences arising as to whether such transcript truly discloses what occurred at the hearing and shall direct that the transcript be corrected and revised in the respects designated by the agency, so as to make it conform to the whole truth.

Sec. 3. Orders or Decisions.—Every final order or decision rendered by an agency in a contested case shall
be in writing or stated in the record and shall be accom-
panied by findings of fact and conclusions of law. Prior
to the rendering of any final order or decision, any party
may propose findings of fact and conclusions of law. If
proposed, all other parties shall be given an opportunity
to except to such proposed findings and conclusions, and
the final order or decision shall include a ruling on each
proposed finding. Findings of fact, if set forth in statu-
tory language, shall be accompanied by a concise and ex-
licit statement of the underlying facts supporting the
findings. A copy of the order or decision and accompany-
ing findings and conclusions shall be served upon each
party and his attorney of record, if any, in person or by
registered or certified mail.

Sec. 4. Judicial Review of Contested Cases.—(a) Any
party adversely affected by a final order or decision in a
contested case is entitled to judicial review thereof under
this chapter, but nothing in this chapter shall be deemed
to prevent other means of review, redress or relief pro-
vided by law.

(b) Proceedings for review shall be instituted by filing
a petition, at the election of the petitioner, in either the
circuit court of Kanawha county, West Virginia, or with
the judge thereof in vacation, or in the circuit court of
the county in which the petitioner or any one of the
petitioners resides or does business, or with the judge
thereof in vacation, within thirty days after the date
upon which such party received notice of the final order
or decision of the agency. A copy of the petition shall
be served upon the agency and all other parties of record
by registered or certified mail. The petition shall state
whether the appeal is taken on questions of law or ques-
tions of fact, or both. No appeal bond shall be required
to effect any such appeal.

(c) The filing of the petition shall not stay enforce-
ment of the agency order or decision or act as a super-
sedes thereto, but the agency may stay such enforce-
ment, and the appellant, at any time after the filing of
his petition, may apply to such circuit court for a stay of
or supersedeas to such final order or decision. Pending
the appeal, the court may grant a stay or supersedeas
upon such terms as it deems proper.
(d) Within fifteen days after receipt of a copy of the
petition by the agency, or within such further time as
the court may allow, the agency shall transmit to such
circuit court the original or a certified copy of the entire
record of the proceeding under review, including a tran-
script of all testimony and all papers, motions, docu-
ments, evidence and records as were before the agency,
all agency staff memoranda submitted in connection with
the case, and a statement of matters officially noted; but,
by stipulation of all parties to the review proceeding, the
record may be shortened. The expense of preparing such
record shall be taxed as a part of the costs of the appeal.
The appellant shall provide security for costs satisfac-
tory to the court. Any party unreasonably refusing to
stipulate to limit the record may be taxed by the court for
the additional costs involved. Upon demand by any
party to the appeal, the agency shall furnish, at the cost
of the party requesting same, a copy of such record. In
the event the complete record is not filed with the court
within the time provided for in this section, the appellant
may apply to the court to have the case docketed, and the
court shall order such record filed.
(e) Appeals taken on questions of law, fact or both,
shall be heard upon assignments of error filed in the
cause or set out in the briefs of the appellant. Errors
not argued by brief may be disregarded, but the court
may consider and decide errors which are not assigned
or argued. The court or judge shall fix a date and time
for the hearing on the petition, but such hearing, unless
by agreement of the parties, shall not be held sooner than
ten days after the filing of the petition, and notice of
such date and time shall be forthwith given to the
agency.
(f) The review shall be conducted by the court with-
out a jury and shall be upon the record made before the
agency, except that in cases of alleged irregularities in
procedure before the agency, not shown in the record,
testimony thereon may be taken before the court. The court may hear oral arguments and require written briefs.

(g) The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision or order are:

1. In violation of constitutional or statutory provisions; or
2. In excess of the statutory authority or jurisdiction of the agency; or
3. Made upon unlawful procedures; or
4. Affected by other error of law; or
5. Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or
6. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(h) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals of this state in accordance with the provisions of section one, article six of this chapter.

Sec. 5. Exceptions.—The provisions of this article shall not apply to the workmen's compensation fund, the department of employment security, the state tax commissioner, the state road commissioner, the state road commission, and the teacher's retirement board.

Article 6. Appeals.

Section 1. Supreme Court of Appeals.—Any party adversely affected by the final judgment of the circuit court under this chapter may seek review thereof by appeal to the supreme court of appeals of this state, and jurisdiction is hereby conferred upon such court to hear and entertain such appeals upon application made there-

Section 1. Limitations on Certain Administrative Powers.—No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made, or enforced in any manner or for any purpose except as authorized by law.

Sec. 2. Notice Generally.—Whenever an agency or person is authorized or required to give any notice under this chapter, unless a different method of giving such notice is otherwise expressly permitted or prescribed, such notice shall be given either by personal delivery thereof to the agency or person to be so notified, or by depositing such notice in the United States mail, postage prepaid, in an envelope addressed to such agency or person at the last known address of such agency or person. Proof of the giving of notice in either such manner may be made by the affidavit of any officer or assistant or employee of the agency, or by affidavit of any person over eighteen years of age, naming the agency or person to which or to whom such notice was given and specifying the time, place and manner of the giving thereof.

Sec. 3. Repeal.—All acts or parts of acts which are inconsistent with the provisions of this chapter are hereby repealed to the extent of such inconsistency, but such repeal shall not affect pending proceedings. No subsequent legislation shall be held to supersede or modify the provisions of this chapter except to the extent that such legislation shall do so specifically and expressly.

Sec. 4. Construction and Effect; Severability of Provisions.—Nothing in this chapter shall be held to limit or repeal additional requirements imposed by statute or otherwise recognized by law. No procedural requirement shall be mandatory as to any agency proceeding initiated...
prior to the effective date of this chapter. If any provision
of this chapter or the application thereof to any person or
circumstance is held invalid, such invalidity shall not
affect other provisions or applications of the chapter
which can be given effect without the invalid provision
or its application, and to this end the provisions of this
chapter are declared to be severable.

CHAPTER 2

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

[Passed February 7, 1964: in effect from passage.]

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

Be it enacted by the Legislature of West Virginia:

Title
2. Appropriations.
3. Administration.

Title 1. General Provisions.

Section
1. General policy.
2. Definitions.
3. Classification of appropriations.

Section 1. General Policy.—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 year one thousand nine hun-
dred sixty-five.

Sec. 2. Definitions.—For the purpose of this act:
1. “Board” shall mean the Board of Public Works;
2. “Spending unit” shall mean the department, agency or
institution to which an appropriation is made;
5 The "fiscal year one thousand nine hundred sixty-five"
6 shall mean the period from July first, one thousand nine
7 hundred sixty-four through June thirtieth, one thousand
8 nine hundred sixty-five;
9 "From collections" shall mean that part of the total ap-
10 propriation which must be collected by the spending unit
11 to be available for expenditure. If the authorized amount of
12 collections is not collected, the total appropriation for the
13 spending unit shall be reduced automatically by the
14 amount of the deficiency in the collection. If the amount
15 collected exceeds the amount designated "from collections,"
16 the excess shall be set aside in a special surplus fund and
17 may be expended for the purpose of the spending unit as
18 provided by chapter one hundred thirty-two, acts of the
19 Legislature, regular session, one thousand nine hundred
20 sixty-one.

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 Unless otherwise specified, appropriations for personal
7 services shall include salaries of heads of spending unit;
8 "Current expenses" shall be expended only for operating
9 cost other than personal services or capital outlay;
10 "Repairs and alterations" shall include all expenditures
11 for materials, supplies and labor used in repairing and
12 altering buildings, grounds and equipment, other than
13 personal services;
14 "Equipment" shall be expended only for things which
15 have an appreciable and calculable period of usefulness in
16 excess of one year;
17 "Buildings" shall include construction and alteration of
18 structures and the improvements of lands, sewer and water
19 improvements, and shall include shelter, support, storage,
20 protection, or the improvement of a natural condition;
21 "Lands" shall be expended only for the purchase of lands
22 or interest in lands.
23 Appropriations otherwise classified shall be expended
24 only where the distribution of expenditures for different 25 purposes cannot well be determined in advance or it is 26 necessary or desirable to permit the spending unit freedom 27 to spend an appropriation for more than one of the above 28 purposes.

Sec. 4. Method of Expenditure.—Money appropriated by 2 this act, unless otherwise specifically directed, shall be ap- 3 propriated and expended according to the provisions of 4 article three, chapter twelve of the code of West Virginia, 5 one thousand nine hundred thirty-one, or according to any 6 law detailing a procedure specifically limiting that article.

Title 2. Appropriations.

Sec. 1. Appropriations from general revenue.

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Business and Industrial Relations
Bureau of labor and department of weights and measures—Acct. No. 450
Commission on interstate cooperation—Acct. No. 472
Department of banking—Acct. No. 480
Department of commerce—Acct. No. 465
Department of mines—Acct. No. 460
Interstate commission on Potomac river basin—Acct. No. 473
Ohio river valley water sanitation commission—Acct. No. 474
Southern interstate nuclear board—Acct. No. 471
Southern regional education board—Acct. No. 475
State commission on manpower, technology and training—Acct. No. 470
West Virginia air pollution commission—Acct. No. 476
West Virginia historic commission—Acct. No. 477
West Virginia non-intoxicating beer commissioner—Acct. No. 490
West Virginia racing commission—Acct. No. 495
West Virginia state aeronautics commission—Acct. No. 485

Charities and Correction
Andrew S. Rowan memorial home—Acct. No. 384
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### Appropriations

#### Conservation and Development
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- West Virginia library commission—Acct. No. 350
- West Virginia schools for the deaf and blind—Acct. No. 333
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- Governor’s office—Acct. No. 120

#### Fiscal
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- Board of public works—Acct. No. 220
- Department of finance and administration—Acct. No. 210
- Sinking fund commission—Acct. No. 170
- State board of insurance—Acct. No. 225
- State commissioner of public institutions—Acct. No. 190
- State tax commissioner—Acct. No. 180
- State tax commissioner (property appraisal)—Acct. No. 185
- Treasurer’s office—Acct. No. 160

#### Incorporating and Recording
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<td>West Virginia civil service system—Acct. No. 840</td>
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</tr>
<tr>
<td>West Virginia liquor control commissioner—Acct. No. 837</td>
<td>1280</td>
</tr>
<tr>
<td>West Virginia racing commission—Acct. No. 808</td>
<td>1275</td>
</tr>
<tr>
<td>West Virginia university (special capital improvement fund)—Acct. No. 853</td>
<td>1282</td>
</tr>
</tbody>
</table>

**PAYABLE FROM STATE ROAD FUND**

<table>
<thead>
<tr>
<th>Appropriations</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of motor vehicles—Acct. No. 671</td>
<td>1271, 1287</td>
</tr>
<tr>
<td>State road commission (general administration and engineering)—Acct. No. 670</td>
<td>1270</td>
</tr>
<tr>
<td>State tax commissioner (gasoline tax division)—Acct. No. 672</td>
<td>1271</td>
</tr>
</tbody>
</table>

**PAYABLE FROM GENERAL SCHOOL FUND**

<table>
<thead>
<tr>
<th>Appropriations</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of education—Acct. No. 703</td>
<td>1272</td>
</tr>
<tr>
<td>Department of education (salaries of county superintendents)—Acct. No. 706</td>
<td>1273</td>
</tr>
<tr>
<td>Department of education (scholarships for teacher training)—Acct. No. 715</td>
<td>1274</td>
</tr>
<tr>
<td>Department of education (school lunch program)—Acct. No. 705</td>
<td>1273</td>
</tr>
<tr>
<td>Department of education (state aid to children's home)—Acct. No. 707</td>
<td>1274</td>
</tr>
<tr>
<td>Department of education (veterans education)—Acct. No. 702</td>
<td>1272</td>
</tr>
<tr>
<td>State board of education—Acct. No. 700</td>
<td>1271</td>
</tr>
<tr>
<td>State board of education (vocational division)—Acct. No. 701</td>
<td>1272</td>
</tr>
<tr>
<td>State board of school finance—Acct. No. 704</td>
<td>1273</td>
</tr>
<tr>
<td>State tax commissioner (cigarette sales tax)—Acct. No. 713</td>
<td>1274</td>
</tr>
<tr>
<td>State tax commissioner (store and general licenses division)—Acct. No. 712</td>
<td>1274</td>
</tr>
</tbody>
</table>

**PAYABLE FROM WORKMEN'S COMPENSATION FUND**

<table>
<thead>
<tr>
<th>Appropriations</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workmen's compensation commission—Acct. No. 900</td>
<td>1285</td>
</tr>
</tbody>
</table>

3. Supplemental and deficiency appropriations.
4. Awards for claims against the state.
5. Reappropriations.
6. Appropriations from surplus revenues.
7. Special revenue appropriations.
8. Specific funds and collection accounts.
10. Sinking fund deficiencies.
11. Appropriations from taxes and license fees.
12. Appropriations to pay costs of publication of delinquent corporations.
13. Appropriations for local governments.
14. Total appropriations.
15. General school fund.
Section 1. Appropriations from General Revenue.—From the state fund, general revenue, there is hereby appropriated conditionally upon the fulfillment of the provisions set forth in chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-one, the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred sixty-five.

LEGISLATIVE

1—Senate

Acct. No. 101

Fiscal Year 1964-65

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salaries of Members</td>
<td>$51,000.00</td>
</tr>
<tr>
<td>2 Compensation and per diem of officers and attaches</td>
<td>$75,000.00</td>
</tr>
<tr>
<td>3 Mileage of Members</td>
<td>$3,000.00</td>
</tr>
<tr>
<td>4 Current Expenses and Contingent Fund</td>
<td>$115,000.00</td>
</tr>
<tr>
<td>5 To pay Clerk of the Senate for compiling and publishing the West Virginia Blue Book, the distribution of which shall be made by the office of the Clerk of the Senate and shall include seventy-five copies for each member of the Legislature and two copies to each classified and approved High and Junior High School and one to each Elementary School within the state</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>6 To pay cost of printing the 1964 edition of Blue Book</td>
<td>$46,000.00</td>
</tr>
<tr>
<td>7 Drafting Service</td>
<td>$9,000.00</td>
</tr>
<tr>
<td>8 The appropriations for the Senate for the fiscal year 1963-64 are to remain in full force and effect, and are hereby reappropriated to June 30, 1965.</td>
<td></td>
</tr>
<tr>
<td>9 Any balances so reappropriated may be transferred and credited to the 1964-65 accounts.</td>
<td></td>
</tr>
<tr>
<td>10 Upon the written request of the Clerk of the Senate the State Auditor shall transfer</td>
<td></td>
</tr>
</tbody>
</table>
The Clerk of the Senate is authorized to draw
his requisitions upon the Auditor, payable
out of the contingent fund of the Senate, for
any bills for supplies and services that may
have been incurred by the Senate and not
included in the appropriation bill, and for
bills for supplies and services incurred after
adjournment, and for the necessary opera-
tion of the Senate offices, the requisition for
same to be accompanied by the bills to be
filed with the Auditor.

2—House of Delegates

Acct. No. 102

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salaries of Members</td>
<td>$159,000.00</td>
</tr>
<tr>
<td>2 Compensation and per diem of officers and attaches</td>
<td>$162,300.00</td>
</tr>
<tr>
<td>4 Mileage of Members</td>
<td>$7,500.00</td>
</tr>
<tr>
<td>5 Current Expenses and Contingent Fund</td>
<td>$50,000.00</td>
</tr>
<tr>
<td>6 Drafting Service</td>
<td>$5,000.00</td>
</tr>
</tbody>
</table>

The appropriations for the House of Delegates
for the fiscal year 1963-64 are to remain in
full force and effect, and are hereby re-
appropriated to June 30, 1965.

Any balances so reappropriated may be trans-
ferred and credited to the 1964-65 accounts.

Upon the written request of the Clerk of the
House of Delegates the State Auditor shall
transfer amounts between items of the total
appropriation in order to protect or increase
the efficiency of the service.

The Clerk of the House of Delegates, with ap-
proval of the Speaker, is authorized to draw
his requisitions upon the Auditor, payable
out of the contingent fund of the House of
Delegates, for any bills for supplies and ser-
vices that may have been incurred by the
House of Delegates, and not included in the
appropriation bill, for bills for services and
supplies incurred in preparation for the
opening of the session and after adjourn-
ment, and for the necessary operation of the
House of Delegates offices, the requisition
for same to be accompanied by bills to be
filed with the Auditor.

For duties imposed by law and by the House
of Delegates, including the salary allowed by
law as keeper of the rolls, the Clerk of the
House of Delegates shall be paid a salary of
$950.00 per month, payable from the contin-
gent fund of the House of Delegates, and the
Clerk may employ a secretary and a clerk
at a salary to be determined by the Speaker
of the House of Delegates.

3—Joint Expenses

Acct. No. 103

1 To pay the cost of legislative printing and
     stationery ........................................ $ 150,000.00

3 Commission on Interstate Cooperation ........ 20,000.00

4 Joint Committee on Government and Finance 220,000.00

5 Other Authorized Legislative Committees ....  15,000.00

6 The appropriation for Joint Expenses for the
     fiscal year 1963-64 are to remain in full force
     and effect, and are hereby reappropriated to
     June 30, 1965.

10 Any balances so reappropriated may be trans-
    ferred and credited to the 1964-65 accounts.

12 Upon the written request of the Clerk of the
    Senate and the Clerk of the House of
    Delegates the State Auditor shall transfer
    amounts between items of the total appro-
    priation in order to protect or increase the
    efficiency of the service.
## Appropriations

### JUDICIAL

#### 4—Supreme Court of Appeals

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salaries of Judges</td>
<td>$112,500.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$134,410.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$23,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$3,000.00</td>
</tr>
<tr>
<td>5 Total</td>
<td>$272,910.00</td>
</tr>
</tbody>
</table>

#### 5—Judicial—Auditor's Office

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salaries of Judges</td>
<td>$390,000.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$91,000.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$26,000.00</td>
</tr>
<tr>
<td>4 Judges’ Retirement System</td>
<td>$43,000.00</td>
</tr>
<tr>
<td>5 Criminal Charges</td>
<td>$282,000.00</td>
</tr>
<tr>
<td>6 Total</td>
<td>$832,000.00</td>
</tr>
</tbody>
</table>

This appropriation shall be administered by the State Auditor who shall draw his requisition for warrants in payment of salaries in the form of payrolls, making deductions therefrom as required by law, for taxes and other items. The appropriation for Judges’ Retirement System is to be transferred to the Judges’ Retirement Fund, in accordance with the law relating thereto, upon requisition of the State Auditor.

#### 6—State Law Library

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$24,180.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$18,500.00</td>
</tr>
<tr>
<td>4 Total</td>
<td>$44,680.00</td>
</tr>
</tbody>
</table>
7—Judicial Council
Acct. No. 118
1 To pay expenses of Members of the Council $ 12,000.00

EXECUTIVE
8—Governor’s Office
Acct. No. 120

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Governor</td>
<td>$20,999.00</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$90,540.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$25,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>Civil Contingent Fund</td>
<td>$175,000.00</td>
</tr>
</tbody>
</table>

6 Of this appropriation there may be expended, 7 at the discretion of the Governor, an 8 amount not to exceed $1,000.00 as West 9 Virginia’s contribution to the Interstate Oil 10 Compact Commission.

11 Appalachian Regional Area Development
12 Program                              10,000.00

13 Publication of Governor’s papers and 14 Inaugural expense 35,000.00

15 Custodial Fund                      60,000.00

16 To be used for current general expenses, in- 17 cluding compensation of servants and em- 18 ployees, household maintenance, cost of offi- 19 cial functions, and any additional house- 20 hold expenses occasioned by such official 21 functions.

22 Total                                $421,539.00

9—Board of Probation and Parole
Acct. No. 123

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$204,960.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$101,310.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$3,000.00</td>
</tr>
</tbody>
</table>

4 Total                    $309,270.00
## FISCAL

### 10—Auditor’s Office—General Administration

**Acct. No. 150**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of State Auditor</td>
<td>$14,265.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$374,780.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$119,600.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>5 Microfilm Program</td>
<td>$7,000.00</td>
</tr>
</tbody>
</table>

**Total** $530,645.00

### 11—Treasurer’s Office

**Acct. No. 160**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of State Treasurer</td>
<td>$14,032.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$125,230.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$20,050.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$10,000.00</td>
</tr>
</tbody>
</table>

**Total** $169,312.00

### 12—Sinking Fund Commission

**Acct. No. 170**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$21,900.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$1,000.00</td>
</tr>
</tbody>
</table>

**Total** $22,900.00

### 13—State Tax Commissioner

**Acct. No. 180**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,496,430.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$500,760.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$23,000.00</td>
</tr>
</tbody>
</table>

**Total** $2,020,190.00
14—State Tax Commissioner

Acct. No. 185

1 Property Appraisal $1,000,000.00
2 Any balance remaining in the appropriation
3 “Property Appraisal” at the close of the fiscal year 1963-64 is hereby reappropriated for expenditure during the fiscal year 1964-65.

15—State Commissioner of Public Institutions

Acct. No. 190

1 Salary of Commissioner $10,000.00
2 Other Personal Services 63,520.00
3 Current Expenses 22,875.00
4 Equipment 2,000.00
5 Total $98,395.00

16—Department of Finance and Administration

Acct. No. 210

1 Personal Services $526,435.00
2 Current Expenses 234,800.00
3 Repairs and Alterations 48,100.00
4 Equipment 19,000.00
5 Postage 130,000.00
6 Records Management 18,000.00
7 Office of State Emergency Planning 15,000.00
8 Total $991,335.00

The Workmen’s Compensation Commission, Department of Welfare, Public Service Commission, Department of Natural Resources, Department of Motor Vehicles, State Road Commission, State Health Department and State Tax Commission—Income Tax Division, shall reimburse the Postage appropriation of the Department of Finance and Administration monthly for all meter service. Any spending unit operating from
19 Special Revenue or receiving reimbursement for postage costs from the Federal Government shall refund to the “Postage Account” of the Department of Finance and Administration such amounts. Should this appropriation for postage be insufficient to meet the mailing requirements of the state spending units as set out above, any excess postage meter service requirements shall be a proper charge against the units, and each spending unit shall refund to the Postage appropriation of the Department of Finance and Administration any amounts required for that Department for postage in excess of this appropriation.

Any unexpended balance remaining in the “Postage Account” at the close of the fiscal year 1963-64 is hereby reappropriated for expenditure during the fiscal year 1964-65.

17—The Board of Public Works

Acct. No. 220

1 Contingent Fund ......................................................... $ 55,000.00
2 Out of the above appropriation the sum of $5,000.00 shall be used for study for forestry camp for boys.

18—State Board of Insurance

Acct. No. 225

1 Personal Services ....................................................... $ 12,000.00
2 Current Expenses ........................................................ 3,650.00
3 Total ................................................................. $ 15,650.00

LEGAL

19—Attorney General

Acct. No. 240

1 Salary of Attorney General ........................................ $ 15,035.00
2 Other Personal Services ............................................. 211,410.00
3 Current Expenses ........................................ 21,310.00
4 Equipment .................................................. 12,500.00
5 To protect the resources or tax structure of
   the State in controversies or legal proceed-
   ings affecting same ....................................... 3,250.00
8 Total ................................................................ $ 263,505.00

9 When legal counsel is appointed by the
10 Attorney General, upon the request of the
11 proper authority in any state spending
12 unit, this account shall be reimbursed from
13 such unit's appropriated account in an
14 amount agreed upon by the Attorney Gen-
15 eral and the proper authority of said spend-
16 ing unit.

20—Commission on Uniform State Laws

   Acct. No. 245

1 Total ............................................................ $ 3,150.00

INCORPORATING AND RECORDING

21—Secretary of State

   Acct. No. 250

1 Salary of Secretary of State ....................... $ 13,799.00
2 Other Personal Services .............................. 74,000.00
3 Current Expenses ........................................ 20,015.00
4 Equipment .................................................... 7,800.00
5 Total .......................................................... $ 115,614.00

EDUCATIONAL

22—State Board of Education—Vocational Division

   Acct. No. 294

1 Total .......................................................... $ 500,000.00
2 To be transferred to General School Fund
3 (Acct. No. 701) and be administered in ac-
4 cordance with provisions of House Bill No.
5 7—1960 Legislature.
6 Any unexpended balance remaining in this
7 appropriation at the close of the fiscal
8 year 1963-64 is hereby reappropriated for
9 expenditure during the fiscal year 1964-65.

23—State Board of School Finance—State Aid to Schools

Acct. No. 295

1 State Aid to supplement the General School
2 Fund ......................................................... $62,800,000.00
3 To be transferred to the General School Fund
4 upon the requisition of the Governor.

24—Department of Education—Aid for Exceptional Children

Acct. No. 296

1 Personal Services ........................................... $ 15,540.00
2 Current Expenses ............................................ 4,700.00
3 Out-of-State Instruction .................................... 30,000.00
4 Aid to Counties ................................................ 308,500.00

5 Total .......................................................... $ 358,740.00
6 The appropriation for “Out-of-State Instruc-
7 tion” may be expended to provide instruc-
8 tion, care and maintenance for educable
9 persons who have multiple handicaps and
10 for whom the state provides no facilities.

25—Department of Education—Textbook Aid

Acct. No. 297

1 Textbooks for Schools ........................................ $ 150,000.00
2 To be distributed according to chapter fifty-
3 one, acts of the Legislature, regular session,
4 one thousand nine hundred thirty-nine.
26—Teachers Retirement Board
Acct. No. 298

1 Benefit Fund—Payments to Retired Teachers $3,005,974.00
2 Employers’ Accumulation Fund—To Match
3 contributions of members 3,344,000.00
4 Expense Fund 33,304.00
5 Total $6,383,278.00

27—State Commission on Higher Education
Acct. No. 299

1 Total $3,000.00

28—West Virginia University
Acct. No. 300

1 Personal Services $9,298,302.00
2 Current Expenses 1,332,000.00
3 Repairs and Alterations 400,000.00
4 Equipment 648,710.00
5 Fire Insurance Premiums 90,000.00
6 Oak Wilt Control Research 10,000.00
7 State aid to students of Veterinary Medicine 48,000.00
8 Office of Research and Development 108,800.00
9 Bureau for Coal Research 112,000.00
10 National Youth Science Camp 50,000.00
11 Forestry Products 60,000.00
12 Total $12,157,812.00

13 Out of the above appropriation for Personal Services, the sum of $8,500.00 shall be used only for the employment of a Spray Specialist who shall be stationed only at West Virginia University Farm at Kearneysville, and $7,200.00 for the employment of a Labor Specialist.
29—Potomac State College of West Virginia University

Acct. No. 315

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$413,902.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$65,385.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$41,400.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$35,300.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$555,987.00</strong></td>
</tr>
</tbody>
</table>

30—Marshall University

Acct. No. 320

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,787,272.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$261,817.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$86,903.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$123,515.00</td>
</tr>
<tr>
<td>5 Flood Wall Assessment</td>
<td>$3,200.00</td>
</tr>
<tr>
<td>6 Experimental Projects in Teacher Education</td>
<td>$29,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$3,291,707.00</strong></td>
</tr>
</tbody>
</table>

31—Fairmont State College

Acct. No. 321

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$877,897.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$92,832.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$41,580.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$60,119.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,072,428.00</strong></td>
</tr>
</tbody>
</table>

32—Glenville State College

Acct. No. 322

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$566,208.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$75,101.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$45,340.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$38,535.00</td>
</tr>
<tr>
<td>5 Community Development and Research</td>
<td>$13,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$738,184.00</strong></td>
</tr>
</tbody>
</table>
### 33—West Liberty State College

**Acct. No. 323**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$731,709.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$89,500.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$46,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$40,000.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$907,209.00</strong></td>
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### 34—Shepherd College

**Acct. No. 324**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$546,831.00</td>
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<td>2 Current Expenses</td>
<td>$80,500.00</td>
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<td>3 Repairs and Alterations</td>
<td>$36,815.00</td>
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<td>4 Equipment</td>
<td>$51,200.00</td>
</tr>
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<td>5 Community Development and Research</td>
<td>$15,000.00</td>
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<td><strong>Total</strong></td>
<td><strong>$730,346.00</strong></td>
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### 35—Concord College

**Acct. No. 325**

<table>
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<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$971,781.00</td>
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<td>2 Current Expenses</td>
<td>$114,962.00</td>
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<td>3 Repairs and Alterations</td>
<td>$26,407.00</td>
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<td>4 Equipment</td>
<td>$65,688.00</td>
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<td><strong>Total</strong></td>
<td><strong>$1,178,838.00</strong></td>
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### 36—West Virginia Institute of Technology

**Acct. No. 327**

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<tr>
<th>Item</th>
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<td>1 Personal Services</td>
<td>$773,494.00</td>
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<td>2 Current Expenses</td>
<td>$89,839.00</td>
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<td>3 Repairs and Alterations</td>
<td>$54,883.00</td>
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<td>4 Equipment</td>
<td>$98,956.00</td>
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<td><strong>Total</strong></td>
<td><strong>$1,017,172.00</strong></td>
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### 37—West Virginia State College

**Acct. No. 328**

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<td>1 Personal Services</td>
<td>$1,200,569.00</td>
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<td>2 Current Expenses</td>
<td>$166,600.00</td>
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<td>3 Repairs and Alterations</td>
<td>$89,484.00</td>
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<td>4 Equipment</td>
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<td><strong>Total</strong></td>
<td><strong>$1,517,653.00</strong></td>
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### 38—Bluefield State College

**Acct. No. 329**

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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$419,124.00</td>
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<td>2 Current Expenses</td>
<td>$63,116.00</td>
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<td>3 Repairs and Alterations</td>
<td>$38,488.00</td>
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<td>4 Equipment</td>
<td>$57,625.00</td>
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<td>5 Renovation of Girls’ Dormitory</td>
<td>$15,000.00</td>
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<td><strong>Total</strong></td>
<td><strong>$593,353.00</strong></td>
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### 39—West Virginia State College—4-H Camp

**Acct. No. 330**

<table>
<thead>
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<th>Item</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$13,740.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$5,270.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$6,160.00</td>
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<td>4 Equipment</td>
<td>$1,120.00</td>
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<td><strong>Total</strong></td>
<td><strong>$26,290.00</strong></td>
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### 40—West Virginia Schools for the Deaf and Blind

**Acct. No. 333**

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<tr>
<th>Item</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$570,485.00</td>
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<td>2 Current Expenses</td>
<td>$160,330.00</td>
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<td>3 Repairs and Alterations</td>
<td>$40,700.00</td>
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<td>4 Equipment</td>
<td>$20,850.00</td>
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<td><strong>Total</strong></td>
<td><strong>$792,365.00</strong></td>
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### 41—State FFA-FHA Camp and Conference Center

**Acct. No. 336**

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<th>Item</th>
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<td>1 Personal Services</td>
<td>$32,380.00</td>
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<td>2 Current Expenses</td>
<td>$8,175.00</td>
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<td>3 Repairs and Alterations</td>
<td>$7,050.00</td>
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<td>4 Equipment</td>
<td>$8,500.00</td>
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<td><strong>Total</strong></td>
<td><strong>$56,105.00</strong></td>
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### 42—Department of Archives and History

**Acct. No. 340**

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<th>Item</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$38,300.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$7,205.00</td>
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<td>3 Equipment</td>
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<tr>
<td><strong>Total</strong></td>
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### 43—West Virginia Library Commission

**Acct. No. 350**

<table>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$87,500.00</td>
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<td>2 Current Expenses</td>
<td>$5,000.00</td>
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<tr>
<td>3 Equipment</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>4 Books and Periodicals</td>
<td>$43,500.00</td>
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<tr>
<td>5 Library Services for the Blind</td>
<td>$5,000.00</td>
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<td><strong>Total</strong></td>
<td><strong>$142,000.00</strong></td>
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### CHARITIES AND CORRECTION

### 44—West Virginia Industrial School for Boys

**Acct. No. 370**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$258,340.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$121,450.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$39,200.00</td>
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<tr>
<td>4 Equipment</td>
<td>$22,250.00</td>
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<td><strong>Total</strong></td>
<td><strong>$441,240.00</strong></td>
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</table>
### Appropriations

#### 45—Forestry Camp for Boys

**Acct. No. 371**

<table>
<thead>
<tr>
<th>Item</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$85,990.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$83,700.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$10,900.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$13,650.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$194,240.00</strong></td>
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#### 46—West Virginia Industrial Home for Girls

**Acct. No. 372**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$136,360.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$75,545.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$12,900.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$7,450.00</td>
</tr>
<tr>
<td>5 Vocational Training</td>
<td>$5,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$237,255.00</strong></td>
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#### 47—West Virginia State Prison for Women

**Acct. No. 374**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$41,854.00</td>
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<td>2 Current Expenses</td>
<td>$31,390.00</td>
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<td>3 Repairs and Alterations</td>
<td>$11,050.00</td>
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<td>4 Equipment</td>
<td>$1,400.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$85,694.00</strong></td>
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#### 48—West Virginia Penitentiary

**Acct. No. 375**

<table>
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<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$667,360.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$508,200.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$38,600.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$33,200.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,247,360.00</strong></td>
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</table>
### 49—Medium Security Prison

**Acct. No. 376**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$341,800.00</td>
</tr>
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<td>2 Current Expenses</td>
<td>$170,804.00</td>
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<td>3 Repairs and Alterations</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$11,300.00</td>
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</table>

**Total** $543,904.00

### 50—West Virginia Children’s Home

**Acct. No. 380**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$50,065.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$39,280.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$4,400.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$4,250.00</td>
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</table>

**Total** $97,995.00

### 51—Andrew S. Rowan Memorial Home

**Acct. No. 384**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$211,933.00</td>
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<td>2 Current Expenses</td>
<td>$165,903.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$34,400.00</td>
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<tr>
<td>4 Equipment</td>
<td>$8,275.00</td>
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**Total** $420,511.00

### HEALTH AND WELFARE

#### 52—State Health Department

**Acct. No. 400**

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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$393,496.00</td>
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<td>2 Current Expenses</td>
<td>$74,833.00</td>
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<td>3 Equipment</td>
<td>$4,500.00</td>
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<tr>
<td>4 Cancer Control and Treatment</td>
<td>$125,000.00</td>
</tr>
<tr>
<td>5 Tuberculosis Field Clinic and Nursing Service</td>
<td>$10,580.00</td>
</tr>
<tr>
<td>6 Out-Patient Pneumothorax Treatment</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>7 Local Health Services</td>
<td>$550,000.00</td>
</tr>
<tr>
<td>8 Dental Clinics</td>
<td>$15,000.00</td>
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</table>
### Appropriations

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>9 Heart Disease Control</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>10 Maternal and Child Health - mobile Medical Examination Clinic</td>
<td>$25,000.00</td>
</tr>
<tr>
<td>12 Total</td>
<td>$1,233,409.00</td>
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</table>

#### 53—Department of Veterans Affairs

**Acct. No. 404**

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<th>Amount</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$178,100.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$46,950.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$5,786.00</td>
</tr>
<tr>
<td>4 To provide Educational Opportunities for Children of War Veterans as provided by chapter thirty-nine, acts of the Legislature, 1943</td>
<td>$15,000.00</td>
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<tr>
<td>8 Total</td>
<td>$245,836.00</td>
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</table>

Any unexpended balance remaining in the appropriation “To Provide Educational Opportunities for Children of War Veterans” at the close of the fiscal year 1963-64 is hereby reappropriated for expenditure during the fiscal year 1964-65.

#### 54—Department of Welfare

**Acct. No. 405**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$3,672,168.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$1,497,489.00</td>
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<tr>
<td>3 Equipment</td>
<td>$34,290.00</td>
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<tr>
<td>4 Public Assistance Grants (Classified Aid)</td>
<td>$8,415,591.00</td>
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<tr>
<td>5 Aid to Crippled Children</td>
<td>$470,000.00</td>
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<tr>
<td>6 Medical Services and M.A.A.</td>
<td>$2,000,000.00</td>
</tr>
<tr>
<td>7 Conservation of Vision and Prevention of Blindness</td>
<td>$40,000.00</td>
</tr>
<tr>
<td>9 Child Welfare Services</td>
<td>$171,600.00</td>
</tr>
<tr>
<td>10 General Relief and Boarding Care</td>
<td>$650,954.00</td>
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<tr>
<td>11 Social Security Matching Fund</td>
<td>$122,627.00</td>
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<td>12 Total</td>
<td>$17,074,719.00</td>
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<td>Account</td>
<td>Agency/Department/Commission</td>
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<tr>
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<td>------------------------------</td>
</tr>
<tr>
<td>55-406</td>
<td>State Agency on Aging</td>
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<tr>
<td>56-410</td>
<td>Department of Mental Health</td>
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<tr>
<td>57-411</td>
<td>Commission on Mental Retardation</td>
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<tr>
<td>58-419</td>
<td>West Virginia Training School</td>
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<tr>
<td>59-420</td>
<td>Weston State Hospital</td>
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# Appropriations

## 60—Spencer State Hospital

**Acct. No. 421**

<table>
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<tr>
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<tbody>
<tr>
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<td>$750,388.00</td>
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<td>2 Current Expenses</td>
<td>$383,000.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$49,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$22,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,204,888.00</strong></td>
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## 61—Huntington State Hospital

**Acct. No. 422**

<table>
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<th>Item</th>
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</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,190,664.00</td>
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<td>2 Current Expenses</td>
<td>$605,000.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$42,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$38,200.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$1,875,864.00</strong></td>
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## 62—Lakin State Hospital

**Acct. No. 423**

<table>
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<tbody>
<tr>
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<td>$482,784.00</td>
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<td>2 Current Expenses</td>
<td>$199,000.00</td>
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<td>3 Repairs and Alterations</td>
<td>$44,500.00</td>
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<td>4 Equipment</td>
<td>$48,000.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$774,284.00</strong></td>
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## 63—Barboursville State Hospital

**Acct. No. 424**

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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$339,200.00</td>
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<td>2 Current Expenses</td>
<td>$130,426.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$29,000.00</td>
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<td>4 Equipment</td>
<td>$5,500.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$504,126.00</strong></td>
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</tbody>
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### Appropriations

#### 64—Fairmont Emergency Hospital

**Acct. No. 425**

<table>
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<th>Item</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$143,075.00</td>
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<td>2 Current Expenses</td>
<td>$75,445.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$8,300.00</td>
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<td>4 Equipment</td>
<td>$6,300.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$233,120.00</strong></td>
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#### 65—Welch Emergency Hospital

**Acct. No. 426**

<table>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$191,420.00</td>
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<td>2 Current Expenses</td>
<td>$140,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$55,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$17,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$403,420.00</strong></td>
</tr>
</tbody>
</table>

#### 66—Hopemont Sanitarium

**Acct. No. 430**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$438,220.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$313,540.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$9,250.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$776,010.00</strong></td>
</tr>
</tbody>
</table>

#### 67—Pinecrest Sanitarium

**Acct. No. 431**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$629,010.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$462,940.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$26,600.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$32,020.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$1,150,570.00</strong></td>
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<tr>
<td></td>
<td>Appropriations</td>
</tr>
<tr>
<td>---</td>
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</tr>
</tbody>
</table>

### 68—Denmar State Hospital

**Acct. No. 432**

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
</tr>
</tbody>
</table>

5 Total $598,345.00

### 69—Berkeley Springs Sanitarium

**Acct. No. 436**

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
</tr>
</tbody>
</table>

5 Total $53,985.00

### 70—State Board of Education—Rehabilitation Division

**Acct. No. 440**

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
</tr>
<tr>
<td>3</td>
<td>Rehabilitation Center</td>
</tr>
<tr>
<td>4</td>
<td>Case Services</td>
</tr>
<tr>
<td>5</td>
<td>Supervisory Services for Vending Stand Program for the Blind</td>
</tr>
<tr>
<td>6</td>
<td>Training and Special Projects</td>
</tr>
<tr>
<td>7</td>
<td>Social Security Matching Fund</td>
</tr>
</tbody>
</table>

9 Total $823,549.00

### BUSINESS AND INDUSTRIAL RELATIONS

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

**Acct. No. 450**

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
</tr>
<tr>
<td>Department</td>
<td>Acct. No.</td>
</tr>
<tr>
<td>------------------------------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>Department of Mines</td>
<td>460</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Department of Commerce</td>
<td>465</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
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<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>State Commission on Manpower, Technology and Training</td>
<td>470</td>
</tr>
<tr>
<td>Southern Interstate Nuclear Board</td>
<td>471</td>
</tr>
<tr>
<td>Commission on Interstate Cooperation</td>
<td>472</td>
</tr>
</tbody>
</table>

Out of the above appropriation the sum of $7,500.00 may be made available for West Virginia’s membership in The Council of State Governments.
77—Interstate Commission on Potomac River Basin

Acct. No. 473

1 West Virginia's contribution to Interstate Commission on Potomac River Basin $3,600.00

78—Ohio River Valley Water Sanitation Commission

Acct. No. 474

1 West Virginia's contribution to the Ohio River Valley Water Sanitation Commission $14,755.00

79—Southern Regional Education Board

Acct. No. 475

1 West Virginia's contribution to Southern Regional Education Board $36,000.00
3 To be expended upon requisition of the Governor.

80—West Virginia Air Pollution Commission

Acct. No. 476

1 Personal Services $33,700.00
2 Current Expenses 17,185.00
3 Repairs and Alterations 800.00
4 Equipment 27,195.00

5 Total $78,880.00

81—West Virginia Historic Commission

Acct. No. 477

1 Personal Services $800.00
2 Current Expenses 16,700.00

3 Total $17,500.00

82—Department of Banking

Acct. No. 480

1 Personal Services $104,800.00
2 Current Expenses 39,885.00
### 83—West Virginia State Aeronautics Commission

**Acct. No. 485**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$15,396.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$13,395.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$2,415.00</td>
</tr>
<tr>
<td>4 Aerial Markers</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>5 Civil Air Patrol Expenses</td>
<td>$8,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$40,206.00</strong></td>
</tr>
</tbody>
</table>

### 84—West Virginia Non-Intoxicating Beer Commissioner

**Acct. No. 490**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$95,820.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$45,700.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$3,128.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$144,648.00</strong></td>
</tr>
</tbody>
</table>

### 85—West Virginia Racing Commission

**Acct. No. 495**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$74,575.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$27,420.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$102,495.00</strong></td>
</tr>
</tbody>
</table>

### AGRICULTURE

86—Department of Agriculture

**Acct. No. 510**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of Commissioner</td>
<td>$13,799.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$186,027.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$77,375.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>Description</td>
<td>Amount</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>5 Eradication and Control of White Pine Blister</td>
<td>16,995.00</td>
</tr>
<tr>
<td>6 Eradication and Prevention of Livestock Diseases</td>
<td>182,160.00</td>
</tr>
<tr>
<td>7</td>
<td></td>
</tr>
<tr>
<td>8 Eradication and Control of Japanese Beetle and other plant pests</td>
<td>16,945.00</td>
</tr>
<tr>
<td>10 Aid to Dairy Development Program</td>
<td>87,345.00</td>
</tr>
<tr>
<td>11 Eradication and Control of Oak Wilt</td>
<td>93,595.00</td>
</tr>
<tr>
<td>12 Plant Pest Control</td>
<td>26,000.00</td>
</tr>
<tr>
<td>13 Laboratory Operation</td>
<td>10,000.00</td>
</tr>
<tr>
<td>14 Slaughterhouse and Meat Packing Inspection</td>
<td>25,000.00</td>
</tr>
<tr>
<td>15 Total</td>
<td>750,241.00</td>
</tr>
<tr>
<td>87 Department of Agriculture—Soil Conservation Committee</td>
<td></td>
</tr>
<tr>
<td>Acct. No. 512</td>
<td></td>
</tr>
<tr>
<td>1 Personal Services</td>
<td>$ 64,995.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>34,900.00</td>
</tr>
<tr>
<td>3 Total</td>
<td>$ 99,895.00</td>
</tr>
<tr>
<td>88 Department of Agriculture—Marketing and Research</td>
<td></td>
</tr>
<tr>
<td>Acct. No. 513</td>
<td></td>
</tr>
<tr>
<td>1 For cooperation with the Federal Government in a program of marketing and research</td>
<td>$ 115,000.00</td>
</tr>
<tr>
<td>2 Any part or all of this appropriation may be transferred to Special Revenue Fund for the purpose of matching Federal Funds for the above named program.</td>
<td></td>
</tr>
<tr>
<td>89 Department of Agriculture—Agricultural Awards</td>
<td></td>
</tr>
<tr>
<td>Acct. No. 515</td>
<td></td>
</tr>
<tr>
<td>1 West Virginia State Fair</td>
<td>$ 25,000.00</td>
</tr>
<tr>
<td>2 Agricultural Awards</td>
<td>43,000.00</td>
</tr>
<tr>
<td>3 Walnut Festival</td>
<td>3,500.00</td>
</tr>
<tr>
<td>4 Total</td>
<td>$ 71,500.00</td>
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</tbody>
</table>
CONSERVATION AND DEVELOPMENT

90—Geological and Economic Survey Commission
Acct. No. 520

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$122,656.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$41,081.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>Cooperative Mapping Program</td>
<td>$60,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$228,737.00</strong></td>
</tr>
</tbody>
</table>

6 Of the above appropriations for Current Expenses, the sum of $15,000.00 may be used to cooperate with the United States Geological Survey in Ground Waters Resources Study.

11 Of the above appropriation for Cooperative Mapping Program the sum of $10,000.00 may be used for preparation of accurate geographic and political maps of West Virginia.

91—Department of Veterans Affairs
Acct. No. 564

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>In aid of Veterans Day Patriotic Exercises</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>To be expended subject to the approval of the Department of Veterans Affairs upon presentation of satisfactory plans by the Grafton G.A.R. Post, American Legion, Veterans of Foreign Wars and Sons of Veterans.</td>
<td></td>
</tr>
</tbody>
</table>

92—Department of Natural Resources
Acct. No. 565

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$1,143,620.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$393,061.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$119,900.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$99,215.00</td>
</tr>
<tr>
<td>Clarke-McNary—Fire Prevention</td>
<td>$120,000.00</td>
</tr>
<tr>
<td>Area Redevelopment Administration</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>Water Resources Board</td>
<td>$2,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,897,796.00</strong></td>
</tr>
</tbody>
</table>
9 Out of the above appropriation for Current Expenses, subsistence for conservation officers shall be paid at the rate of two dollars and fifty cents per calendar day to the chief conservation officer and to each full-time uniformed conservation officer, under his direct supervision, whose primary duties and responsibilities are law enforcement.

18 Any unexpended balance remaining in the appropriation “Clarke-McNary—Fire Prevention” at the close of the fiscal year 1963-64 is hereby reappropriated for expenditures during the fiscal year 1964-65.

23 Any unexpended balance remaining in the 1962-63 appropriation “For planning, improvements and construction on Natural Resources properties and facilities; land requisition and impoundments” at the close of the fiscal year 1962-63 and reappropriated for the fiscal year 1963-64, is hereby reappropriated for expenditure during the fiscal year 1964-65 and out of this amount reappropriated there is hereby appropriated $100,000.00 for acquisition of land and development of new or existing Natural Resource facilities in Pendleton County.

PROTECTION

93—Department of Public Safety

Acct. No. 570

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,630,956.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>829,444.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>38,400.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>169,808.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,668,608.00</strong></td>
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</table>
## Ch. 2] Appropriations

### 94—Adjutant General—State Militia

Acct. No. 580

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$47,768.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$103,765.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$7,100.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$6,300.00</td>
</tr>
<tr>
<td>5 Compensation of Commanding Officers, Clerical Allowances and Uniform Allowances</td>
<td>$66,900.00</td>
</tr>
<tr>
<td>7 Property Maintenance</td>
<td>$41,245.00</td>
</tr>
<tr>
<td>8 State Armory Board</td>
<td>$828,588.00</td>
</tr>
</tbody>
</table>

| Total                     | $1,101,666.00 |

### 95—Department of Civil and Defense Mobilization

Acct. No. 581

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$35,340.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$11,045.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$4,300.00</td>
</tr>
</tbody>
</table>

| Total                     | $50,685.00 |

### 96—Auditor’s Office—Social Security

Acct. No. 582

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 To match contributions of state employees for social security</td>
<td>$1,139,675.00</td>
</tr>
</tbody>
</table>

The above appropriation is intended to cover the state’s share of social security costs for those spending units operating from General Revenue Fund and General School Fund appropriations. The State Road Commission, Department of Motor Vehicles, Workmen’s Compensation Commission, Public Service Commission, and other departments operating from Special Revenue Funds and/or Federal Funds shall pay their proportionate share of the social security cost for their respective divisions.

Any unexpended balance remaining in this appropriation at the close of the fiscal year
18 1963-64 is hereby reappropriated for expenditure during the fiscal year 1964-65.

97—Department of Mental Health—Insurance
Acct. No. 583

1 Fire Insurance Premiums ........................................ $ 70,000.00
2 To pay insurance premiums covering Department of Mental Health and on buildings at state institutions under supervision of the Department of Mental Health.
3 The above appropriation is for premiums for a three-year period.

98—State Board of Education—Insurance
Acct. No. 584

1 Fire Insurance Premiums ........................................ $ 85,000.00
2 To pay fire insurance premiums on buildings at state colleges and institutions under the supervision of the State Board of Education.
3 The above appropriation is for premiums for a three-year period.
4 To insure contents of buildings ................................ $ 8,000.00
5 To insure contents of non-revenue producing buildings. Third annual installment due on policy covering a five-year period ending July 1, 1967.
6 Total ....................................................................... $ 93,000.00

99—Commissioner of Public Institutions—Insurance
Acct. No. 585

1 Fire Insurance Premiums ........................................ $ 185,000.00
2 To pay insurance premiums on buildings at state institutions under the supervision of Commissioner of Public Institutions.
3 The above appropriation is for premiums for a three-year period.
100—West Virginia Board of Accountancy
   Acct. No. 586
1 To pay the per diem of members and other
2   general expenses ........................................ $ 15,000.00
3   From Collections ........................................ 15,000.00

101—West Virginia Board of Examiners for Practical Nurses
   Acct. No. 587
1 To pay the per diem of members and other
2   general expenses ........................................ $ 16,000.00
3   From Collections ........................................ 16,000.00

102—State Board of Examiners for Registered Nurses
   Acct. No. 588
1 To pay the per diem of members and other
2   general expenses ........................................ $ 35,500.00
3   From Collections ........................................ 35,500.00

103—State Board of Dental Examiners
   Acct. No. 589
1 To pay the per diem of members and other
2   general expenses ........................................ $  5,500.00
3   From Collections ........................................  5,500.00

104—State Board of Professional Foresters
   Acct. No. 5895
1 To pay the per diem of members and other
2   general expenses ........................................ $ 1,014.00
3   From Collections ........................................ 1,014.00

105—State Board of Pharmacy
   Acct. No. 590
1 To pay the per diem of members and other
2   general expenses ........................................ $ 10,500.00
3   From Collections ........................................ 10,500.00
106—State Board of Osteopathy
Acct. No. 591
1 To pay the per diem of members and other general expenses $1,000.00
2 From Collections $1,000.00

107—State Board of Optometry
Acct. No. 592
1 To pay the per diem of members and other general expenses $2,500.00
2 From Collections $2,500.00

108—State Board of Embalmers and Funeral Directors
Acct. No. 593
1 To pay the per diem of members and other general expenses $10,000.00
2 From Collections $10,000.00

109—State Board of Registration for Professional Engineers
Acct. No. 594
1 To pay the per diem of members and other general expenses $20,000.00
2 From Collections $20,000.00

110—State Board of Architects
Acct. No. 595
1 To pay the per diem of members and other general expenses $4,000.00
2 From Collections $4,000.00

111—State Veterinary Board
Acct. No. 596
1 To pay the per diem of members and other general expenses $500.00
2 From Collections $500.00
112—State Board of Law Examiners
Acct. No. 597
1 To pay the per diem of members and other
   general expenses $ 3,000.00

113—Human Rights Commission
Acct. No. 598
1 Personal Services $ 21,500.00
2 Current Expenses 9,450.00
3 Equipment 1,550.00
4 Total 32,500.00

114—West Virginia State Board of Sanitarians
Acct. No. 599
1 To pay the per diem of members and other
   general expenses $ 800.00
3 From Collections 800.00

115—West Virginia Public Employees Retirement Board
Acct. No. 614
1 Employers Accumulation Fund $ 750,000.00
2 Expense Fund 25,000.00
3 Total 775,000.00
4 The above appropriation is intended to cover
   the state's share of the West Virginia Pub-
   lic Employees Retirement cost in accord-
   ance with Senate Bill No. 22, (1961 Legis-
   lature) for those departments operating
   from General Revenue Fund and General
   School Fund appropriations. The State
   Road Commission, Department of Motor
   Vehicles, State Tax Commissioner—Gas-
   line Tax Division, Workmen's Compensa-
   tion Commission, Public Service Commis-
   sion, and other departments operating from
16 Special Revenue Funds and/or Federal Funds shall pay their proportionate share of the retirement costs for their respective divisions. When specific appropriations are not made such payments may be made from the balances in the various Special Revenue Funds in excess of specific appropriations.

116—State Road Commission

Acct. No. 641

1 Total ........................................ $ 6,345,000.00

2 The purpose of the above appropriation is to aid in payment of interest and principal on outstanding road bonds and may be transferred to the state road fund upon the requisition of the Governor.

Sec. 2. Appropriations from Other Funds.—From the funds designated there is hereby appropriated conditionally upon the fulfillment of the provisions set forth in chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-one, the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred sixty-five.

117—State Road Commission—General Administration and Engineering

Acct. No. 670

TO BE PAID FROM STATE ROAD FUND

1 Personal Services ........................................ $ 524,740.00
2 Current Expenses ........................................ 168,315.00
3 Equipment ........................................ 9,000.00

4 Total ........................................ $ 702,055.00

5 In addition to the foregoing appropriations and claims as authorized by this act or by law to be paid from the state road fund, the balance or residue of the annual receipts of
the state road fund is hereby appropriated first for the payment of interest on and prin-
cipal of outstanding road bonds, and there-
after for maintenance, construction and re-
construction of state roads, in accordance
with the provisions of chapter seventeen,
code of West Virginia, one thousand nine
hundred thirty-one, as amended.

118—Department of Motor Vehicles
Acct. No. 671

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$891,700.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$349,104.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$42,040.00</td>
</tr>
<tr>
<td>Purchase of License Plates</td>
<td>$234,200.00</td>
</tr>
<tr>
<td>Social Security Matching Fund</td>
<td>$32,237.00</td>
</tr>
<tr>
<td>Employees Retirement Matching Fund</td>
<td>$44,595.00</td>
</tr>
</tbody>
</table>

7 Total ................................................................ $1,593,876.00

119—State Tax Commissioner—Gasoline Tax Division
Acct. No. 672

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$180,000.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$73,795.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$4,000.00</td>
</tr>
<tr>
<td>Social Security Matching Fund</td>
<td>$6,525.00</td>
</tr>
</tbody>
</table>

5 Total ................................................................ $264,320.00

120—State Board of Education
Acct. No. 700

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$39,932.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$13,680.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$800.00</td>
</tr>
</tbody>
</table>

4 Total ................................................................ $54,412.00
121—State Board of Education—Vocational Division
Acct. No. 701

TO BE PAID FROM GENERAL SCHOOL FUND

1 Personal Services ........................................... $ 48,517.00
2 Current Expenses ........................................... 8,350.00
3 Equipment .................................................... 3,200.00
4 Vocational Aid .............................................. 410,000.00

5 Total ........................................................... $ 470,067.00

6 Any unexpended balance remaining in “Vocational Aid” at the close of the fiscal year 1963-64 is hereby reappropriated for expenditure during the fiscal year 1964-65.

122—Department of Education—Veterans Education
Acct. No. 702

TO BE PAID FROM GENERAL SCHOOL FUND

1 Personal Services ........................................... $ 12,180.00
2 Current Expenses ........................................... 2,968.00

3 Total ........................................................... $ 15,148.00

4 Expenditures from this appropriation shall not exceed the amount to be reimbursed by the Federal Government.

5 Federal funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the State Superintendent of Schools and approval of the Board of Public Works for any emergency which might arise in the operation of this division during the fiscal year.

123—Department of Education
Acct. No. 703

TO BE PAID FROM GENERAL SCHOOL FUND

1 Salary of State Superintendent ......................... $ 14,799.00
2 Other Personal Services .................................. 327,420.00
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$84,085.00</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$5,943.00</td>
</tr>
<tr>
<td>5</td>
<td>National Defense Education Act</td>
<td>$145,000.00</td>
</tr>
<tr>
<td>6</td>
<td>Statewide Testing Program</td>
<td>$176,000.00</td>
</tr>
<tr>
<td>7</td>
<td>Experimental Projects</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td><strong>$768,247.00</strong></td>
</tr>
</tbody>
</table>

Any part or all of the appropriation for "National Defense Education Act" may be transferred to a Special Revenue Fund for the purpose of matching Federal Funds for this program.

124—State Board of School Finance

Acct. No. 704

TO BE PAID FROM GENERAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td></td>
<td>$18,540.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td></td>
<td>$3,110.00</td>
</tr>
<tr>
<td>3 Total</td>
<td></td>
<td><strong>$21,650.00</strong></td>
</tr>
</tbody>
</table>

125—Department of Education—School Lunch Program

Acct. No. 705

TO BE PAID FROM GENERAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td></td>
<td>$58,904.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td></td>
<td>$18,000.00</td>
</tr>
<tr>
<td>3 Aid to Counties—Includes hot lunches and canning for hot lunches</td>
<td></td>
<td>$300,000.00</td>
</tr>
<tr>
<td>5 Total</td>
<td></td>
<td><strong>$376,904.00</strong></td>
</tr>
</tbody>
</table>

126—Department of Education

Acct. No. 706

TO BE PAID FROM GENERAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salaries of County Superintendents</td>
<td></td>
<td>$63,000.00</td>
</tr>
</tbody>
</table>
127—Department of Education  
Acct. No. 707  
TO BE PAID FROM GENERAL SCHOOL FUND  
1 State Aid to Children’s Home $ 25,000.00

128—State Tax Commissioner—  
Store and General Licenses Division  
Acct. No. 712  
TO BE PAID FROM GENERAL SCHOOL FUND  
1 Personal Services $ 36,800.00  
2 Current Expenses 5,500.00  
3 Total $ 42,300.00

129—State Tax Commissioner—  
Enforcement of Cigarette Tax  
Acct. No. 713  
TO BE PAID FROM GENERAL SCHOOL FUND  
1 Personal Services $ 12,900.00  
2 Current Expenses 6,500.00  
3 Equipment 600.00  
4 Total $ 20,000.00

130—Department of Education  
Acct. No. 715  
TO BE PAID FROM GENERAL SCHOOL FUND  
1 Scholarships for Teacher Training $ 150,000.00

131—Real Estate Commission  
Acct. No. 801  
TO BE PAID FROM SPECIAL REVENUE FUND  
1 Personal Services $ 29,700.00  
2 Current Expenses 16,444.00
<table>
<thead>
<tr>
<th>Ch. 2] APPROPRIATIONS</th>
<th>1275</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 Equipment</td>
<td>2,000.00</td>
</tr>
<tr>
<td>4 Social Security Matching Fund</td>
<td>885.00</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching Fund</td>
<td>1,485.00</td>
</tr>
<tr>
<td>6 Total</td>
<td>$ 50,514.00</td>
</tr>
</tbody>
</table>

7 The total amount of this appropriation shall be paid from Special Revenue Fund out of collections of license fees as provided by law.

132—West Virginia Racing Commission
Acct. No. 808
TO BE PAID FROM SPECIAL REVENUE FUND

| 1 Medical Expenses | $ 5,000.00 |
2 The total amount of this appropriation shall be paid from Special Revenue Fund out of collections of license fees and fines as provided by law.
6 No expenditures shall be made from this account except for hospitalization, medical care, and/or funeral expenses for persons contributing to this fund.

133—Auditor’s Office—Land Department Operating Fund
Acct. No. 812
TO BE PAID FROM SPECIAL REVENUE FUND

| 1 Current Expenses | $ 15,000.00 |
2 The total amount of this appropriation shall be paid from Special Revenue Fund out of fees and collections as provided by law.
5 Special funds in excess of the amount herein appropriated may be made available by budget amendments upon request of the State Auditor and the approval of the Board of Public Works.
134—Department of Finance and Administration
Division of Purchases—Revolving Fund

Acct. No. 814

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$82,300.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$14,200.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$8,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Social Security Matching Fund</td>
<td>$2,875.00</td>
</tr>
<tr>
<td>5</td>
<td>Public Employees Retirement Matching Fund</td>
<td>$4,115.00</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$111,490.00</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund as provided by chapter one hundred thirty-two, acts of the Legislature, regular session one thousand nine hundred and sixty-one.

The above appropriation includes salaries and operating expenses.

There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the purchase of supplies for resale.

135—Department of Agriculture

Acct. No. 818

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$167,960.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$40,700.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$8,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Social Security Matching Fund</td>
<td>$4,500.00</td>
</tr>
<tr>
<td>5</td>
<td>Public Employees Retirement Matching Fund</td>
<td>$7,000.00</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$228,160.00</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of collections made by the Department of Agri-
culture as provided by law. It is the inten-
tion that special funds in excess of the
amounts hereby appropriated shall be made
available by budget amendments upon re-
quest of the Commissioner of Agriculture.

136—State Committee of Barbers and Beauticians

Acct. No. 822

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ........................................ $ 32,000.00
2 Current Expenses ........................................ 16,450.00
3 Equipment .................................................. 600.00
4 Social Security Matching Fund ........................ 960.00
5 Public Employees Retirement Matching Fund .......... 1,535.00

6 Total ......................................................... $ 51,545.00

7 The total amount of this appropriation shall be
paid from Special Revenue Fund out of col-
lections made by the State Committee of
Barbers and Beauticians as provided by law.

137—Insurance Commissioner

Acct. No. 826

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ........................................ $ 154,400.00
2 Current Expenses ........................................ 25,610.00
3 Equipment .................................................. 3,000.00
4 Social Security Matching Fund ........................ 5,793.00
5 Public Employees Retirement Matching Fund .......... 7,990.00

6 Total ......................................................... $ 196,793.00

7 The total amount of this appropriation shall be
paid from Special Revenue Fund out of col-
lections for license and report fees as pro-
vided by law.
138—Insurance Commissioner—Fire Marshal

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$120,350.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$30,595.00</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$1,700.00</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$5,580.00</td>
</tr>
<tr>
<td>5</td>
<td>Social Security Matching Fund</td>
<td>$4,000.00</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Retirement Matching Fund</td>
<td>$5,620.00</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$167,845.00</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of collections of the special tax of one half of one percent premium receipts of fire insurance companies as provided by law.

139—Public Service Commission

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salaries of Commissioners</td>
<td>$30,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Other Personal Services</td>
<td>$399,284.00</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$55,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$11,500.00</td>
</tr>
<tr>
<td>5</td>
<td>Social Security Matching Fund</td>
<td>$9,500.00</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Retirement Matching Fund</td>
<td>$19,716.00</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$525,000.00</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of collections for special license fees from public service corporations as provided by law. Out of the above appropriation $5,000.00 may be transferred to the State Water Resources Commission of the Department of Natural Resources for use in cooperation with the U. S. Geological Survey in a program of stream gauging.
140—Public Service Commission—Motor Carrier Division

Acct. No. 829

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services .................................. $ 195,360.00
2 Current Expenses .................................... 44,980.00
3 Equipment .......................................... 6,600.00
4 Social Security Matching Fund ..................... 5,900.00
5 Public Employees Retirement Matching Fund ....... 9,500.00

6 Total .................................................. $ 262,340.00

7 The total amount of this appropriation shall be paid from Special Revenue Fund out of receipts collected for or by the Public Service Commission pursuant to and in the exercise of regulatory authority over motor carriers as authorized by law.

141—Department of Natural Resources

Acct. No. 830

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services .................................. $ 966,590.00
2 Current Expenses .................................... 395,964.00
3 Repairs and Alterations .............................. 67,250.00
4 Equipment .......................................... 149,685.00

5 Total .................................................. $ 1,579,489.00

6 The total amount of this appropriation shall be paid from Special Revenue Fund out of fees collected by the Department of Natural Resources. Expenditures shall be limited to the amounts appropriated except for Federal Funds received and Special Funds collected at state parks. Special Funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the Department of Natural Re-
sources and approval of the Board of Public Works for any emergency which might arise in the operation of this Division during the fiscal year.

142—Department of Public Safety—Inspection Fees

Acct. No. 835

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$104,352.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$70,304.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$7,100.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$18,000.00</td>
</tr>
<tr>
<td>5 Social Security Matching Fund</td>
<td>$633.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$200,389.00</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of fees collected for inspection stickers as provided by law.

Special Funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the Department of Public Safety and approval of the Board of Public Works for the purpose of repairs to, or construction of police barracks, not to exceed one hundred thousand dollars in any one fiscal year.

143—West Virginia Liquor Control Commission

Acct. No. 837

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of Commissioner</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$2,968,790.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$863,000.00</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
<td>$35,000.00</td>
</tr>
<tr>
<td>5 Equipment</td>
<td>$60,000.00</td>
</tr>
</tbody>
</table>
6 Social Security Matching Fund ........................................ 107,000.00
7 Public Employees Retirement Matching Fund ...... 153,000.00

8 Total .................................................................. $ 4,196,790.00

9 The total amount of this appropriation shall
10 be paid from Special Revenue Fund out of
11 liquor revenues.
12 The above appropriation includes the salaries
13 of store personnel, store inspectors, store
14 operating expenses and equipment; and sal-
15 aries, expenses and equipment of adminis-
16 tration offices.
17 There is hereby appropriated from liquor
18 revenues, in addition to the above appro-
19 priation, the necessary amount for the pur-
20 chase of liquor, as provided by law.

144—West Virginia Civil Service System

Acct. No. 840

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ........................................ $ 114,390.00
2 Current Expenses ........................................... 31,435.00
3 Social Security Matching Fund ....................... 4,147.00
4 Public Employees Retirement Matching Fund ...... 5,840.00

5 Total ................................................................ $ 155,812.00

6 The total amount of this appropriation shall
7 be paid from Special Revenue Fund sup-
8 ported by participating agencies as provided
9 by law.
10 The Board of Public Works is hereby au-
11 thorized to make available by budget
12 amendment, upon request of the Civil
13 Service Commission, funds in excess of the
14 amounts hereby appropriated that may be-
15 come available as a result of acts of the
16 Legislature—1961 Regular Session.
### APPROPRIATIONS

#### Ch. 2

145—West Virginia University—Special Capital Improvement Fund

Acct. No. 853

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Forestry Building</td>
<td>$ 300,000.00</td>
</tr>
<tr>
<td>2 Debt Service</td>
<td>300,000.00</td>
</tr>
<tr>
<td>3 Chemistry Building Modernization</td>
<td>1,000,000.00</td>
</tr>
<tr>
<td>4 Property Acquisition</td>
<td>500,000.00</td>
</tr>
<tr>
<td>5 Miscellaneous Small Projects</td>
<td>250,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 2,350,000.00</strong></td>
</tr>
<tr>
<td>6 Creative Arts Center</td>
<td>4,500,000.00</td>
</tr>
<tr>
<td>7 Appalachian Center</td>
<td>1,500,000.00</td>
</tr>
<tr>
<td>8 Law Center</td>
<td>1,500,000.00</td>
</tr>
<tr>
<td>9 Potomac State Auditorium</td>
<td>700,000.00</td>
</tr>
<tr>
<td>10 Utilities, Roads, Parking, Etc.</td>
<td>1,800,000.00</td>
</tr>
<tr>
<td><strong>11</strong></td>
<td><strong>$ 5,950,000.00</strong></td>
</tr>
</tbody>
</table>

12 As required by law, the above projects are listed in a stated order of priority. The costs of projects one through five are to be paid on a cash basis, and the costs of projects seven through eleven are to be paid from the proceeds of revenue bonds issued as authorized by law. It is intended that only complete and useable units or projects be constructed and then only in the listed order of priority: *Provided, however,* That whenever the amount in the Capital Improvement Fund, including both cash collections and the proceeds of bond sales, shall be sufficient to cover all capital expenditures authorized above, then the listed projects shall be considered of equal priority and all of them, or any one or more, may be constructed as soon as plans can be prepared and contracts let therefor.

31 Out of the above appropriation “Creative Arts Center” the sum of $500,000.00 may be expended for the purchase or construct-
34 Appropriation of educational T. V. and/or radio facilities.
35 The total amount of this appropriation shall be paid from the non-revolving Capital Improvement Fund created by the 1959 Legislature, amended by the 1963 Legislature.
36 Any unexpended balance remaining in this appropriation at the close of the fiscal year 1963-64 is hereby reappropriated for expenditure during the fiscal year 1964-65.

146—State Board of Education—Special Capital Improvement Fund

Acct. No. 854

TO BE PAID FROM SPECIAL REVENUE FUND

1 Payment of Principal and Interest on Debt
2 Service on $10,500,000.00 Bond Issue $1,400,000.00
3 Marshall University
4 Maintenance Building 250,000.00
5 West Virginia Institute of Technology
6 Physical Education Building and Land 1,400,000.00
7 West Liberty State College
8 Fine Arts and Classroom Building 1,200,000.00
9 Bluefield State College
10 Addition to Technical Science Facilities 44,000.00
11 Glenville State College
12 Maintenance Building 140,000.00
13 Concord College
14 Maintenance Building and Land 160,000.00
15 West Virginia State College
16 Fine Arts and Classroom Building 1,200,000.00
17 Fairmont State College
18 Fine and Applied Arts Classroom Building 1,600,000.00
19 Glenville State College
20 Addition to Library and New Classrooms 500,000.00
21 Bluefield State College
22 Physical Education Building 1,300,000.00
23 Concord College
24 Fine Arts and Classroom Building .................. 1,650,000.00
25 West Virginia State College
26 Maintenance Building ............................... 175,000.00
27 Shepherd College
28 Land and Maintenance Building .................... 50,000.00
29 West Virginia Institute of Technology
30 Engineering Building and Land ..................... 1,100,000.00

As required by law, the above projects are listed in a stated order of priority. The appropriation on lines 1 and 2 is to be paid on a cash basis, and the costs of projects on lines 3 through 30 are to be paid from the proceeds of revenue bonds issued as authorized by law. It is intended that only complete and useable units or projects be constructed and then only in the listed order of priority: Provided, however, That whenever the amount in the Capital Improvement Fund, including both cash collections and the proceeds of bonds sales, shall be sufficient to cover all capital expenditures authorized above, then the listed projects shall be considered of equal priority and all of them, or any one or more, may be constructed as soon as plans can be prepared and contracts let therefor.

The total amount of this appropriation shall be paid from the non-revolving Capital Improvement Fund created by the 1959 Legislature, amended by the 1963 Legislature. Any unexpended balance remaining in this appropriation at the close of the fiscal year 1963-64 is hereby reappropriated for expenditure during the fiscal year 1964-65, and from the unexpended balance the sum of $60,000.00 made available from date of passage of this act for the purchase of land at West Virginia Institute of Technology.
### 147—Workmen's Compensation Commission

**Acct. No. 900**

**TO BE PAID FROM WORKMEN'S COMPENSATION FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$778,380.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$289,162.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$15,440.00</td>
</tr>
<tr>
<td>4</td>
<td>Social Security Matching Fund</td>
<td>$28,000.00</td>
</tr>
<tr>
<td>5</td>
<td>Public Employees Retirement Matching Fund</td>
<td>$39,700.00</td>
</tr>
<tr>
<td>6</td>
<td><strong>Total</strong></td>
<td><strong>$1,150,682.00</strong></td>
</tr>
</tbody>
</table>

7 There is hereby authorized to be paid out of the above appropriation for Current Expenses the amount necessary for the premiums on bonds given by the State Treasurer and bond custodian for the protection of the Workmen's Compensation Fund.

### Sec. 3. Supplemental and Deficiency Appropriations

**From the State Fund, General Revenue, except as otherwise provided, there are hereby appropriated the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred sixty-four to supplement the 1963-64 appropriations, and to be available for expenditure upon date of passage.**

#### 148—Judicial Auditor's Office

**Acct. No. 111**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salaries of Judges</td>
<td>$6,000.00</td>
</tr>
</tbody>
</table>

#### 149—Department of Finance and Administration

**Acct. No. 210**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
<td>$42,500.00</td>
</tr>
</tbody>
</table>

#### 150—West Virginia Industrial School for Boys

**Acct. No. 370**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$2,670.00</td>
</tr>
</tbody>
</table>
151—West Virginia Industrial Home for Girls
Acct. No. 372

1 Personal Services ........................................ $ 1,900.00

152—Department of Welfare
Acct. No. 405

1 Personal Services ........................................ $ 300,000.00
2 Current Expenses .................................... 3,953.00
3 Equipment ................................................. 62,448.00
4 Aid to Crippled Children ................................ 150,000.00
5 Medical Services and MAA ................................ 1,500,000.00

6 Total ........................................................ $ 2,016,401.00

7 The above appropriation for current expenses
8 and $12,448.00 in the equipment account shall
9 be used to match Federal Funds to cover the
10 total loss by fire of District Office No. 5
11 located in Welch, West Virginia.

153—West Virginia Training School
Acct. No. 419

1 Personal Services ........................................ $ 53,170.00
2 Current Expenses .................................... 18,500.00
3 Equipment ................................................. 21,165.00

4 Total ........................................................ $ 92,835.00

154—Department of Labor
Acct. No. 450

1 Current Expenses ........................................ $ 13,600.00

155—Department of Natural Resources
Acct. No. 565

1 Clarke-McNary—Fire Prevention ......................... $ 75,000.00
156—Department of Public Safety

Acct. No. 570

1 Current Expenses ........................................ $ 40,100.00

157—State Board of Professional Foresters

Acct. No. 5895

1 To pay the per diem of members and other general expenses ........................................ 500.00
2 From Collections ........................................ 500.00

158—Department of Motor Vehicles

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1 Personal Services ........................................ $ 42,000.00
2 Social Security Matching Fund ....................... 1,523.00
3 Total ....................................................... $ 43,523.00

159—Insurance Commissioner

Acct. No. 826

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ........................................ $ 27,903.00
2 Current Expenses ........................................ 3,000.00
3 Equipment .................................................. 10,025.00
4 Social Security Matching Fund ....................... 1,012.00
5 Public Employees Retirement Matching Fund ........ 1,395.00
6 Total ....................................................... $ 43,335.00

Sec. 4. Awards for Claims against the State.—From the 2 funds designated there are hereby appropriated for the 3 fiscal year 1964-65, and to remain in effect until June 30, 4 1965 for payment of claims against the state, the following 5 amounts as itemized:
Claims versus the Adjutant General
TO BE PAID FROM GENERAL REVENUE FUND
1 C. F. Nichols ......................................................$ 750.00
2 A. A. Booth ......................................................... 110.82
3 William Roth ....................................................... 84.45
4 Julius Corbin ....................................................... 180.03
5 Tri-City Traction Co. ............................................... 84.08
6 Ernie and Avanell Williams ................................... 600.00
7 Daniel Huisjack ................................................... 93.46

Claims versus Department of Finance and Administration
TO BE PAID FROM GENERAL REVENUE FUND
1 United Fuel Gas Company ...................................... $ 10,052.70
2 West Virginia Heating and Plumbing Co. .................... 469.90

Claims versus Department of Mental Health
TO BE PAID FROM GENERAL REVENUE FUND
1 Woodrum's ......................................................... $ 700.00
2 Kraus Brothers ................................................... 1,171.12
3 Kanawha Banking and Trust Co. ............................... 
4 Administrator C.T.A. of Estate of
5 Rader W. Haworth, deceased ................................ 800.00

Claims versus Public Institutions
TO BE PAID FROM GENERAL REVENUE FUND
1 County Court of Raleigh County .............................. $ 350.00
2 Lelia Hall, et al. .................................................. 1,377.89
3 Capital Restaurant Equipment Co. ............................ 1,250.00
4 Ada Poole ......................................................... 5,000.00

Claim versus Racing Commission
TO BE PAID FROM GENERAL REVENUE FUND
1 Harry D. Keith .................................................. $ 938.32

Claim versus State Board of Education
TO BE PAID FROM GENERAL REVENUE FUND
1 Dana Teaford ..................................................... $ 10,000.00
### Claims versus State Tax Commissioner

**TO BE PAID FROM GENERAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harold H. Shaffer</td>
<td>$953.20</td>
</tr>
<tr>
<td>L. H. Schwartz</td>
<td>$451.50</td>
</tr>
<tr>
<td>G. G. Priestley</td>
<td>$1,001.57</td>
</tr>
</tbody>
</table>

### Claim versus Vocational Rehabilitation

**TO BE PAID FROM GENERAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Virginia Newspaper Company</td>
<td>$17.10</td>
</tr>
</tbody>
</table>

### Claim versus Department of Welfare

**TO BE PAID FROM GENERAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charles G. and Esther T. Peters</td>
<td>$405.00</td>
</tr>
</tbody>
</table>

### Claims versus State Road Commission

**TO BE PAID FROM STATE ROAD FUND**

<table>
<thead>
<tr>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board of Education of McDowell County</td>
<td>$502.34</td>
</tr>
<tr>
<td>Mrs. John Hanchock</td>
<td>$69.27</td>
</tr>
<tr>
<td>Frank L. Adkins</td>
<td>$1,263.52</td>
</tr>
<tr>
<td>Ambrose Ellis</td>
<td>$102.49</td>
</tr>
<tr>
<td>Sallie Adkins</td>
<td>$141.16</td>
</tr>
<tr>
<td>Ward Wylie</td>
<td>$4,000.00</td>
</tr>
<tr>
<td>Otter Eagle Coal Company</td>
<td>$13,630.83</td>
</tr>
<tr>
<td>Lee Payne</td>
<td>$700.00</td>
</tr>
<tr>
<td>Floyd Haught</td>
<td>$10,500.00</td>
</tr>
<tr>
<td>John I. Beach</td>
<td>$745.97</td>
</tr>
<tr>
<td>Percy R. Schultz</td>
<td>$75.00</td>
</tr>
<tr>
<td>Leota Mills Tyree</td>
<td>$271.32</td>
</tr>
<tr>
<td>Willard C. Gardner</td>
<td>$5,500.00</td>
</tr>
<tr>
<td>Paul H. Groves</td>
<td>$2,134.88</td>
</tr>
<tr>
<td>Harold Hughes</td>
<td>$500.00</td>
</tr>
<tr>
<td>Frank Adkins Garage</td>
<td>$225.00</td>
</tr>
<tr>
<td>Mary Collins, Administratrix of the Estate of Carnegie Dora Skidmore, deceased</td>
<td>$3,500.00</td>
</tr>
<tr>
<td>Frances Helen Ward</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>W. L. Price</td>
<td>$58.44</td>
</tr>
<tr>
<td>Marie Hatfield</td>
<td>$41.00</td>
</tr>
</tbody>
</table>
Claim versus Department of Education
TO BE PAID FROM GENERAL SCHOOL FUND

1 Thomas Edward Marion $325.00

Claims versus Workmen’s Compensation Commission
TO BE PAID FROM WORKMEN’S COMPENSATION FUND

1 Kessler Institute of Rehabilitation $6,754.92
2 W. Dean DeLaMater 67.74

Sec. 5. Reappropriations.—The date for expiring the un-
2 expended balances, if any, in items I and II in the appro-
3 priations made by and under authority of Section 6 of the
4 1962 Budget Act and items II, IV, VI, VII, IX, X, XII, XV,
5 XVI, XVIII, XIX, XXI, XXII, XXIII, XXIV, XXV, XXVI,
6 XXVII, XXVIII, XXIX, XXX, XXXI, XXXII, XXXIV,
7 XXXV, XXXVI, XXXVII, XXXVIII, XXXIX, and XL in
8 the appropriations made by and under authority of Section
9 4 of the 1963 Budget Act is extended to June 30, 1965 and
10 such items are hereby reappropriated from their respective
11 dates of expiration to June 30, 1965.
12 Item XIX—Weston State Hospital, renovate Soldiers Home,
13 as herein reappropriated, may be used to renovate Sol-
14 diers Home and/or other major repairs to buildings or
15 other capital improvements to be approved by the
16 Board of Public Works.
17 Item XXV—Hopemont Sanitarium, as herein reappropriated, may be used for storm windows and screens for Gore Hospital and annex, new smoke stack for nurses’ home, repairs to roadways and spouting, and construction of garage.

22 Item XXVI—Pinecrest Sanitarium, as herein reappropriated, may be used for repairs to electrical and plumbing system and repairs to roofs on A, B and D Units and the nursing home.

Sec. 6. Appropriations from Surplus Revenues.—The following items are appropriated from the General Revenue Fund, subject to the following terms and conditions:

(a) The following items are hereby appropriated and are to be available for expenditures only out of the surplus in the Treasury, subject to the approval of the board of Public Works.

(b) The Board of Public Works shall review the revenues of the state from the date that appropriations hereunder are expected to be made available for expenditure, and determine whether, in its opinion, revenues then in prospect or on hand will be sufficient to meet all appropriations under the 1963 Budget Act, and make a finding with respect thereof. In the event that such finding shall show sufficient revenues on hand or in prospect to meet all other appropriations and reappropriations made by the 1963 Budget Act, and subject to the foregoing conditions, any or all of the following items may be released for expenditure by the Board of Public Works from the date of passage of this act and such appropriation shall remain in full force and effect until June 30, 1965.

22 Item 1. **Department of Mental Health** $ 150,000.00
For purchase of drugs for distribution to mental institutions under their control.

25 Item 2. **West Virginia University** 125,000.00
For purchase of land.

27 Item 3. **Marshall University** 35,000.00
For University Heights project.
29 Item 4. West Virginia Industrial School for Boys ............................................. 45,000.00
30 To complete water system.

32 Item 5. Department of Commerce ......................................................... 350,000.00
33 For construction and operation of
34 New York World's Fair Building.

35 Item 6. Andrew S. Rowan Memorial Home .............................................. 25,000.00
36 To construct boiler house.

37 Item 7. Department of Natural Resources .............................................. 50,000.00
38 For equipment and cost of operating
39 Rhododendron River Boat.

40 Item 8. West Virginia Schools for the Deaf and Blind .............................. 16,000.00
41 For Braille writers and tape recorders.

43 Item 9. West Virginia Industrial School for Girls .................................... 4,700.00
44 To replace and repair lock system.

46 Item 10. Department of Welfare ............................................................ 450,000.00
47 For equipment.

48 Item 11. Department of Public Safety .................................................... 61,035.00
49 For repairs to roof of State Police
50 Academy .............................................. 10,000.00
51 To change from wet to dry
52 chemistry ........................................... 17,000.00
53 For communication equipment ... 34,035.00

54 Item 12. Department of Finance and Administration .............................. 53,500.00
55 For repairs to Office Building 3 28,500.00
56 For air conditioning of museum 25,000.00

58 Item 13. West Virginia University .......................................................... 100,000.00
59 Center for Appalachian Studies and
60 Development.

61 Item 14. Marshall University ............................................................... 150,000.00
62 For major repairs to eliminate fire and
63 safety hazards.
64 Item 15. Department of Natural Resources... 300,000.00
65 For improvements at Kanawha State Forest.

66 Item 16. Secretary of State .................. 15,000.00
67 For equipment.

68 Item 17. Department of Natural Resources 355,000.00
69 For improvements at Tygart Lake State
70 Park.

71 Item 18. West Liberty State College .......... 50,000.00
72 For paving of parking areas and sidewalks.

73 Item 19. Shepherd College ................... 65,000.00
74 To purchase land.

75 Item 20. Concord College ..................... 25,000.00
76 To purchase library books.

77 Item 21. Department of Natural Resources 30,000.00
78 For Sutton Reservoir for engineering,
79 planning, and recreation development.

80 Item 22. State Board of School Finance ...... 125,000.00
81 For pilot program in reorganization of in-
82 structional program at George Wash-
83 ington High School in Kanawha County.

84 Item 23. Department of Natural Resources 30,000.00
85 For Summersville Reservoir for engineering,
86 planning, and recreation development.

87 Item 24. Department of Natural Resources 25,000.00
88 For improvements at North Bend State
89 Park.

90 Item 25. Department of Agriculture—Soil
91 Conservation Committee ..................... 50,000.00
92 For Watershed Development Program.

93 Item 26. Department of Education ............ 450,000.00
94 For transfer to the General School Fund to
95 be allocated to each county at the rate of
96 one dollar per net enrolled pupil, said
97 amount to be allocated to each school in
98 the county on the net enrollment basis
99 and to be expended for instructional aids
and/or library books, and said allocation and expenditure to be over and above that provided by the county during the school year of 1962-63.

The above items shall be released in the priority as listed and shall be released prior to the items listed hereafter.

Item 27. Department of Natural Resources 50,000.00
For bridge at entrance to Watoga State Park.

Item 28. Public Land Corporation 125,000.00
To purchase, restore, and/or renovate Old Custom House—Wheeling.

Item 29. Department of Agriculture 30,000.00
For improvements to existing Farmers' Market—Beckley.

Item 30. Bluefield State College 30,000.00
For purchase of land and paving parking areas.

Item 31. State Tax Commissioner 500,000.00
For property appraisal.

Item 32. Department of Finance and Administration 8,000.00
For purchase and installation of parking meters.

Item 33. Department of Natural Resources 20,000.00
For improvements at Cedar Creek State Park.

Item 34. Department of Natural Resources 40,000.00
For improvements at Babcock State Park.

Item 35. Department of Natural Resources 15,000.00
For improvements at Pinnacle Rock.

Item 36. Department of Commerce 35,000.00
To supplement operation cost of historical drama.
Ch. 2] Appropriations

135 Item 37. Department of Natural Resources 10,000.00
136 For water supply improvement at
137 Spring Run Hatchery.

138 Item 38. Department of Natural Resources 25,000.00
139 For rabies control.

140 Item 39. West Virginia Children's Home 100,000.00
141 To construct and equip school building.

142 Item 40. West Virginia Industrial School for
143 Boys ...................................................... 40,000.00
144 To complete swimming pool.

145 Item 41. Department of Natural Resources 25,000.00
146 For improvements at Chief Logan Recreation Area.

148 Item 42. Department of Natural Resources 25,000.00
149 For improvements at Fork Creek Recreation Area, Boone County.

Sec. 7. Special Revenue Appropriations.—There is hereby appropriated for expenditure during the fiscal year one thousand nine hundred sixty-five appropriations made by general law from special revenue which are not paid into the state fund as general revenue under the provisions of section two, article two, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one: Provided, however, That none of the moneys so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of articles two and three, chapter twelve of the code of West Virginia and chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-one, and unless the spending unit has filed with the state director of the budget and the state auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues accruing to such fund;

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

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

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

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

Sec. 10. Sinking Fund Deficiencies.—There is hereby appropriated to the Board of Public Works a sufficient amount to meet a deficiency that may arise in the funds of the State Sinking Fund Commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The Board of Public Works is authorized to transfer from time to time such amounts to the State Sinking Fund Commission as may be necessary for this purpose.

The State Sinking Fund Commission shall reimburse the state of West Virginia through the Board of Public Works from the first remittance collected from any state agency or local taxing district for which the Board of Public Works advanced funds, with interest at the rate carried by the bonds for which the advance was made.

Sec. 11. Appropriations from Taxes and License Fees.—There is hereby appropriated from the cigarette tax for administration and enforcement of the law relating to said tax a sum not to exceed one and one-half per cent of the tax collected or stamps sold. There is hereby appropriated from the soft drink tax revenues for administration and enforce-
ment of the law relating to said tax, a sum not to exceed two and one-half per cent of the total revenues collected. All such salaries and expenses, authorized by law as afore-said, shall be paid by the Tax Commissioner through the state treasurer out of gross collections.

Sec. 12. Appropriations to Pay Costs of Publication of Delinquent Corporations.—There is hereby appropriated out of the state fund, general revenue, out of funds not otherwise appropriated to be paid upon requisition of the Auditor and/or the Governor, as the case may be, a sum sufficient to pay the cost of publication of delinquent corporations as provided by sections seventy-five and seventy-seven, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

Sec. 13. 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:
(a) For the redemption of lands;
(b) By public service corporations;
(c) For tax forfeitures.

Sec. 14. Total Appropriations.—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. 15. 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. Constitutionality.

Section 1. Appropriations Conditional.—The expenditure of the appropriations made by this act, except those
3 appropriations made to the legislative and judicial branches
4 of the state government, are conditioned upon the compli-
5 ance by the spending unit with the requirements of article
6 five, chapter five of the code of West Virginia, one thou-
7 sand nine hundred thirty-one, as amended by chapter one
8 hundred thirty-two, acts of the Legislature, regular session,
9 one thousand nine hundred sixty-one.
10 Where former spending units have been absorbed by or
11 combined with other spending units by acts of this Legis-
12 lature, it is the intent of this act that reappropriation shall
13 be to the succeeding or later spending unit created unless
14 otherwise indicated.

Sec. 2. 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 portion shall be in full
5 force and effect as if the portion declared unconstitutional
6 had never been a part of the act.

CHAPTER 3

(House Bill No. 7—By Mr. White and Mr. Buch)

[Passed February 1, 1964; in effect ninety days from passage. Approved by the
Governor.]

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, designated
article one-e, relating to the southern interstate nuclear
compact.

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, designated article one-e, to
read as follows:
Article 1-e. Southern Interstate Nuclear Compact.

Section
1. Definitions.
2. Enactment of compact.
3. Member of southern interstate nuclear compact.
4. Employees of the board.
5. Duties of member of the board.
6. Supplementary agreements.
7. Cooperation among state agencies, boards and departments.
8. Appropriations.
9. Severability clause.

Section 1. Definitions.—As used in this chapter, unless the context requires otherwise:
1. “Compact” means the southern interstate nuclear compact;
2. “Board” means the southern interstate nuclear board.

Sec. 2. Enactment of Compact.—The southern interstate nuclear compact is hereby enacted into law and entered into by the state of West Virginia with any and all states legally joining therein in accordance with its terms, in the form substantially as follows:

SOUTHERN INTERSTATE NUCLEAR COMPACT

Article I. Policy and Purpose

The party states recognize that the proper employment of nuclear energy, facilities, materials, and products can assist substantially in the industrialization of the south and the development of a balanced economy for the region. They also recognize the optimum benefit from and acquisition of nuclear resources and facilities requires systematic encouragement, guidance, and assistance from the party states on a cooperative basis. It is the policy of the party states to undertake such cooperation on a continuing basis; it is the purpose of this compact to provide the instruments and framework for such a cooperative effort to improve the economy of the south and contribute to the individual and community well-being of the region’s people.

Article II. The Board

(a) There is hereby created an agency of the party states to be known as the “Southern Interstate Nuclear
Board" (hereinafter called the board). The board shall be composed of one member from each party state designated or appointed in accordance with the law of the state which he represents and serving and subject to removal in accordance with such law. Any member of the board may provide for the discharge of his duties and the performance of his functions thereon (either for the duration of his membership or for any lesser period of time) by a deputy or assistant, if the laws of his state make specific provision therefor. The federal government may be represented without vote if provision is made by federal law for such representation.

(b) The board members of the party states shall each be entitled to one vote on the board. No action of the board shall be binding unless taken at a meeting at which a majority of all members representing the party states are present and unless a majority of the total number of votes on the board are cast in favor thereof.

(c) The board shall have a seal.

(d) The board shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The board shall appoint an executive director who shall serve at its pleasure and who shall also act as secretary, and who, together with the treasurer, shall be bonded in such amounts as the board may require.

(e) The executive director, with the approval of the board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the board's functions irrespective of the civil service, personnel or other merit system laws of any of the party states.

(f) The board may establish and maintain, independently or in conjunction with any one or more of the party states, a suitable retirement system for its full-time employees. Employees of the board shall be eligible for social security coverage in respect of old age and survivors insurance provided that the board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The board may establish and
maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The board may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

(h) The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same.

(i) The board may establish and maintain such facilities as may be necessary for the transacting of its business. The board may acquire, hold, and convey real and personal property and any interest therein.

(j) The board shall adopt by-laws, rules, and regulations for the conduct of its business, and shall have the power to amend and rescind these by-laws, rules, and regulations. The board shall publish its by-laws, rules and regulations in convenient form and shall file a copy thereof, and shall also file a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(k) The board annually shall make to the governor of each party state, a report covering the activities of the board for the preceding year, and embodying such recommendations as may have been adopted by the board, which report shall be transmitted to the legislature of said state. The board may issue such additional reports as it may deem desirable.

**Article III. Finances**

(a) The board shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.
(b) Each of the board’s budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. One half of the total amount of each budget of estimated expenditures shall be apportioned among the party states in equal shares; one quarter of each such budget shall be apportioned among the party states in accordance with the ratio of their populations to the total population of the entire group of party states based on the last decennial federal census; and one quarter of each such budget shall be apportioned among the party states on the basis of the relative average per capita income of the inhabitants in each of the party states based on the latest computations published by the federal census-taking agency. Subject to appropriation by their respective legislatures, the board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the board.

(c) The board may meet any of its obligations in whole or in part with funds available to it under article two(h) of this compact, provided that the board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the board makes use of funds available to it under article two(h) thereof, the board shall not incur any obligation prior to the allotment of funds by the party jurisdictions adequate to meet the same.

(d) Any expenses and any other costs for each member of the board in attending board meetings shall be met by the board.

(e) The board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the board shall be subject to the audit and accounting procedures established under its by-laws. However, all receipts and disbursements of funds handled by the board shall be audited yearly by a qualified public
accountant and the report of the audit shall be included in and become part of the annual report of the board.

(f) The accounts of the board shall be open at any reasonable time for inspection.

**Article IV. Advisory Committees**

The board may establish such advisory and technical committees as it may deem necessary, membership on which to include but not be limited to private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, voluntary health agencies, and officials of local, state and federal government, and may cooperate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

**Article V. Powers**

The board shall have power to:

(a) Ascertain and analyze on a continuing basis the position of the south with respect to nuclear and related industries.

(b) Encourage the development and use of nuclear energy, facilities, installations, and products as part of a balanced economy.

(c) Collect, correlate, and disseminate information relating to civilian uses of nuclear energy, materials, and products.

(d) Conduct, or cooperate in conducting, programs of training for state and local personnel engaged in any aspect of:

(1) Nuclear industry, medicine, or education or the promotion or regulation thereof.

(2) The formulation or administration of measures designed to promote safety in any matter related to the development, use or disposal of nuclear energy, materials, products, installations, or wastes.

(e) Organize and conduct, or assist and cooperate in organizing and conducting, demonstrations of nuclear
product, material, or equipment use and disposal and of proper techniques or processes for the application of nuclear resources to the civilian economy or general welfare.

(f) Undertake such non-regulatory functions with respect to non-nuclear sources of radiation as may promote the economic development and general welfare of the region.

(g) Study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to nuclear fields.

(h) Recommend such changes in, or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or ordinances of the party states in any of the fields of its interest and competence as in its judgment may be appropriate. Any such recommendation shall be made through the appropriate state agency with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstance which may justify variations to meet local conditions.

(i) Prepare, publish and distribute (with or without charge) such reports, bulletins, newsletters or other material as it deems appropriate.

(j) Cooperate with the atomic energy commission or any agency successor thereto, any other officer or agency of the United States and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interest.

(k) Act as licensee of the United States government or any party state with respect to the conduct of any research activity requiring such license and operate such research facility or undertake any program pursuant thereto.

(l) Ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of nuclear incidents in the area comprising the party states, to coordinate the nuclear incident prevention and control plans and the work
relating thereto of the appropriate agencies of the party
states and to facilitate the rendering of aid by the party
states to each other in coping with nuclear incidents. The
board may formulate and, in accordance with need from
time to time, revise a regional plan or regional plans for
coping with nuclear incidents within the territory of the
party states as a whole or within any subregion or sub-
regions of the geographic area covered by this compact.

Article VI. Supplementary Agreements

(a) To the extent that the board has not undertaken
an activity or project which would be within its power
under the provisions of article five of this compact, any
two or more of the party states (acting by their duly
constituted administrative officials) may enter into sup-
plementary agreements for the undertaking and continu-
ance of such an activity or project. Any such agreement
shall specify its purpose or purposes; its duration and
the procedure for termination thereof or withdrawal
therefrom; the method of financing and allocating the
costs of the activity or project; and such other matters
as may be necessary or appropriate. No such supplemen-
tary agreement entered into pursuant to this article shall
become effective prior to its submission to and approval
by the board. The board shall give such approval unless
it finds that the supplementary agreement or the activity
or project contemplated thereby is inconsistent with the
provisions of this compact or a program or activity con-
ducted by or participated in by the board.

(b) Unless all of the party states participate in a sup-
plementary agreement, any cost or costs thereof shall be
borne separately by the states party thereto. However,
the board may administer or otherwise assist in the op-
eration of any supplementary agreement.

(c) No party to a supplementary agreement entered
into pursuant to this article shall be relieved thereby of
any obligation or duty assumed by said party state under
or pursuant to this compact, except that timely and proper
performance of such obligation or duty by means of
the supplementary agreement may be offered as per-
formance pursuant to the compact.
Article VII. Other Laws and Relationships

Nothing in this compact shall be construed to:

(a) Permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order or ordinance of a party state or subdivision thereof now or hereafter made, enacted or in force.

(b) Limit, diminish, or otherwise impair jurisdiction exercised by the atomic energy commission, any agency successor thereto, or any other federal department, agency or officer pursuant to and in conformity with any valid and operative act of Congress.

(c) Alter the relations between and respective internal responsibilities of the government of a party state and its subdivisions.

(d) Permit or authorize the board to exercise any regulatory authority or to own or operate any nuclear reactor for the generation of electric energy; nor shall the board own or operate any facility or installation for industrial or commercial purposes.

Article VIII. Eligible Parties, Entry into Force and Withdrawal

(a) Any or all of the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia shall be eligible to become party to this compact.

(b) As to any eligible party state this compact shall become effective when its legislature shall have enacted the same into law: Provided, That it shall not become initially effective until enacted into law by seven states.

(c) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall become effective until the governor of the withdrawing state shall have sent formal notice in writing to the governor of each other party state informing said governors of the action of the legislature in repealing the compact and declaring an intention to withdraw.
Article IX. Severability and Construction

The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant hereto shall be liberally construed to effectuate the purposes thereof.

Sec. 3. Member of Southern Interstate Nuclear Compact.—The governor shall appoint the board member of the southern interstate nuclear board which is established by article two of the compact by and with the advice and consent of the Senate. Such member shall serve at the pleasure of the governor. The governor is hereby authorized to appoint an alternate member who may serve at and for such time as the regular member shall designate and shall have the same power and authority as the regular member when so serving.

Sec. 4. Employees of the Board.—The employees of the board shall be under such merit system as the board shall provide and, for the purposes of carrying out the provisions of article two (f), the board and its employees shall be considered a state agency, and the state employees’ retirement system is hereby authorized to contract with the board in order to further or facilitate the activities of the board pursuant to article two (f) of the compact. No such contract shall take effect prior to its approval by the governor.
Sec. 5. Duties of Member of the Board.—(a) The member of the board appointed and serving in accordance with section two of this article shall assist in the coordination of atomic activities within this state.

(b) The board member is hereby authorized and empowered to assist in the orderly development of atomic knowledge within the state of West Virginia.

Sec. 6. Supplementary Agreements.—Any supplementary agreement entered into under article six of the compact requiring the expenditure of funds shall not become effective as to the state until the required funds are appropriated by the Legislature.

Sec. 7. Cooperation among State Agencies, Boards and Departments.—The departments, boards, agencies, commissions, officers and employees of the state and its subdivisions are authorized to cooperate with the board in the furtherance of any of its activities pursuant to this compact.

Sec. 8. Appropriations.—The Legislature may appropriate such funds as it deems necessary to carry out the provisions of this chapter, article, and sections.

Sec. 9. Severability Clause.—If for any reason any section or provision of this chapter shall be held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remainder of this chapter.

CHAPTER 4

(Com. Sub. for Senate Bill No. 4—Originating in the Senate Committee on the Judiciary)

Passed February 6, 1964; in effect ninety days from passage. Approved by the Governor.

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, designated article
fourteen, relating to the establishing of a state commission on aging, to provide for the appointing of a director and such advisory committees and local committees as the commission deems necessary; to prescribe the powers and duties of the commission and its director; and to provide cooperative assistance in the development of programs at the local and community level.

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, designated article fourteen, to read as follows:


Section 1. Members.—There is hereby created the “State Commission on Aging,” hereinafter referred to as the “commission.” The commission shall consist of seventeen members, as follows: Seven members, herein referred to as government representatives, who shall be the state superintendent of schools, the director of health, the director of mental health, the commissioner of public institutions, the commissioner of welfare, the director of the West Virginia division of vocational rehabilitation, and the commissioner of the West Virginia department of employment security; and ten additional citizens of the state, herein referred to as citizen representatives, no more than five of whom shall belong to the same political party, who have demonstrated an interest in and knowledge of the problems of the aging. The governor shall appoint the ten citizen representatives of the commission by and with the advice and consent of the senate.
Sec. 2. Citizen Representatives.—The citizen representatives shall be appointed for terms of four years each, and until their successors are appointed and qualified; except that of the members first appointed, four shall be appointed for terms of one year, two for terms of two years, two for terms of three years, and two for terms of four years. Vacancies shall be filled for the remainder of any unexpired term in the same manner as the original appointment.

Sec. 3. Office Space; Officers; Meetings.—The commission may be supplied with necessary office space. A majority of the members of the commission shall constitute a quorum for the transaction of business. The commission shall elect a chairman, a vice chairman, and such other officers as it deems necessary. The commission shall meet at least two times each year. If unable to attend a commission meeting, a government representative shall send in his place his deputy or another person who has authority to act on behalf of the government representative, who shall be considered a member of the commission for the purpose of obtaining a quorum for the transaction of business.

Sec. 4. Expenses.—Each citizen representative shall be entitled to receive out of funds appropriated or available for such purposes, travel and other necessary expenses actually incurred in the performance of his official duties under the provisions of this article. Requisition for such expenses shall be accompanied by a sworn and itemized statement which shall be filed with the auditor.

Sec. 5. Director.—After its citizen members have been appointed by the governor, the commission shall appoint a director who shall act as the chief administrative officer of the commission. He shall be a person who is professionally qualified by experience and training to assume the responsibilities of the position. The director's annual salary shall, within the limits of funds available, be fixed by the board of public works, and he may be reimbursed for travel and other necessary expenses actually incurred in the performance of his official duties. Requisition for
Sec. 6. Personnel.—The director shall, with the advice and consent of the commission, appoint such other personnel as the commission deems to be necessary for the efficient performance of the duties prescribed by this article. Within the limits of funds available, and with the approval of the board of public works, the commission may fix the compensation of such other personnel, and may incur other expenses necessary to the effective discharge of its powers and duties.

Sec. 7. Advisory Committees.—The commission may create whatever advisory committees it deems necessary in such fields as health and mental health; income maintenance; employment and vocational rehabilitation; education; recreation and library services; social services; state and local community organization and leadership development, and may use funds appropriated or available for such purposes to defray the expense of such advisory committees. It shall, where feasible, designate a commission member having special competence in a field as chairman of any advisory committee it may create in that field. The commission may, in its discretion, also create such local or regional advisory committees. All such advisory committees shall report to the commission with regard to their activities and findings. Members of all such advisory committees may be entitled to receive out of funds appropriated or available for such purposes travel and other necessary expenses actually incurred in the performance of their official duties under the provisions of this article. Requisition for such expenses shall be accompanied by a sworn and itemized statement which shall be filed with the auditor.

Sec. 8. Purposes; Actions.—The commission through its director shall take action to carry out the following purposes:

(a) Conduct, and encourage other organizations to conduct, studies of the problems of the state's older people;

(b) Encourage, promote and aid in the establishment
of local programs and services for the aging. The commission may assist local governmental and other agencies by designing surveys that could be used locally to determine needs of older people; by recommending the creation of such services and facilities as appear to be needed; by serving as a clearing house for the collection and distribution of information on aging; and by assisting organizations and communities in such other ways as the commission may deem appropriate;

(c) Conduct programs of public education on the problems of the aging;

(d) Review existing state programs for the aging, and annually make recommendations to the governor and the Legislature for improvements in and additions to such programs;

(e) Encourage and assist governmental and private agencies to coordinate their efforts on behalf of the aging in order that such efforts be effective and the duplication and wasting of effort be eliminated;

(f) Represent the state's concern for its senior citizens by collecting, analyzing and disseminating information about the aged and aging; and coordinate statewide local and voluntary efforts to serve the aging and make use of their wisdom and capacities, with due regard to the development of programs at the local level.

Sec. 9. Demonstration Programs.—The commission may establish, under the administration of the director, in selected areas and local communities of the state, demonstration programs of services for the aging. Particular emphasis shall be given to services designed to foster continued participation of older people in family and community life and to prevent, insofar as possible, the onset of dependency and the need for long-term institutional care. The programs shall be established to demonstrate their value and to stimulate local agencies to continue the programs and to create new services where needed. Any appropriations made for such demonstration programs may be made contingent upon local appropriations or gifts in money or in kind for the support of such programs. The county court of any county or governing
body of any city, village or municipality in this state may furnish and appropriate money for establishing a demonstration program.

Sec. 10. Designated State Agency.—The commission shall constitute the designated state agency for handling all programs of the federal government relating to the aging requiring action within the state, which are not the specific responsibility of another state agency under the provisions of federal law or which have not been specifically entrusted to another state agency by the Legislature.

Sec. 11. Donations.—The commission may receive on behalf of the state any grant or gift and accept the same, so that the title shall pass to the state. All moneys from grants or gifts shall be deposited with the state treasurer in a special fund and shall be used for the purposes set forth in the grant or gift, if the purposes are within the powers conferred on the commission. The commission shall be empowered to comply with all regulations and requirements to qualify for federal grants and to administer such federal funds.

Sec. 12. Records and Files.—All records, files and other property belonging to the state commission on problems of the aging pursuant to appropriation made and funds available under the provisions of senate concurrent resolution number four heretofore adopted on the twenty-eighth day of February, one thousand nine hundred fifty-seven, and senate committee substitute for house concurrent resolution number five heretofore adopted on the twelfth day of March, one thousand nine hundred fifty-nine, shall be turned over to the commission on aging herein created and shall be continued as part of the records, files and other property thereof.

Sec. 13. Reports.—The commission shall submit a progress report to the governor and to the members of the Legislature on or before January first of each year, in addition to such other recommendations, studies and plans as it may submit from time to time.
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, designated article fifteen, establishing a state commission on mental retardation, prescribing its purposes, powers and duties, and establishing an advisory committee to the commission.

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, designated article fifteen, to read as follows:

Article 15. State Commission on Mental Retardation.

Section
1. Members.
2. Quorum; officers; meetings.
3. Employment, salary and expenses of personnel.
4. Advisory committee.
5. Purposes.
6. State agency for federal mental retardation program.
7. Donations and grants.
8. Annual report required.

Section 1. Members.—There is hereby created the “State Commission on Mental Retardation,” hereinafter referred to as the “commission.” The commission shall consist of seven members, who, ex officio, shall be the state superintendent of schools, the director of health, the director of mental health, the commissioner of public institutions, the commissioner of welfare, the director of the West Virginia division of vocational rehabilitation and the commissioner of the West Virginia department of employment security.

Sec. 2. Quorum; Officers; Meetings.—A majority of the members of the commission shall constitute a quorum
for the transaction of business. The commission shall
elect a chairman, a vice chairman, and such other officers
as it shall deem necessary. The commission shall meet
at least two times each year. Meetings will be held upon
call of the chairman or of a majority of its members.

Sec. 3. Employment, Salary and Expenses of Personnel.—The commission shall have authority to employ
such personnel as in its judgment may be necessary to
carry out the work of the commission, and to fix the
salaries for such employees. The commission may, within
the limits of funds available, incur traveling and other
expenses necessary to the effective discharge of its powers
and duties. Requisition for such expenses shall be ac-
accompanied by a sworn and itemized statement which shall
be filed with the auditor.

Sec. 4. Advisory Committee.—There is hereby created
an advisory committee to the commission to consist of
fifteen members, who shall be appointed by the governor,
by and with the advice and consent of the senate, to serve
for three years; except that of the first appointments
made pursuant to this article, five shall be made for
a one-year term, five shall be made for a two-year term
and five shall be made for a three-year term. Terms
shall commence on the first day of July and shall end on
the thirtieth day of June. In case of a vacancy due to
death or resignation of a member, or otherwise, the gover-
nor may fill the unexpired term.

The advisory committee shall meet at least once a year
with the commission and shall act in an advisory capacity
to the commission.

Members of the advisory committee, when their attend-
ance is requested by the chairman of the commission, may
be reimbursed for actual expenses incident to the per-
formance of their duties in an amount not to exceed
twenty-five dollars per day plus an allowance of ten cents
per mile for every mile actually traveled to and from
such meetings.

Sec. 5. Purposes.—The commission shall take action
to carry out the following purposes:
(a) Plan for and take other steps leading to comprehensive state and community action to combat mental retardation.

(b) Determine what action is needed to combat mental retardation in the state and the resources available for this purpose.

(c) Develop public awareness of the mental retardation problem and of the need for combating it.

(d) Coordinate state and local activities relating to the various aspects of mental retardation and its prevention, treatment, or amelioration.

(e) Consult with and advise the governor and Legislature on all aspects of mental retardation.

(f) Consult with and advise state agencies, boards or departments with mental retardation responsibilities relative to the effective discharge of such responsibilities.

Sec. 6. State Agency for Federal Mental Retardation Program.—The commission is hereby designated and established as the sole state agency for receiving appropriations under and carrying out the purposes of section five of Public Law 88-156, eighty-eighth Congress, approved October 24, 1963, and any law amending, revising, supplementing or superseding section five of said Public Law 88-156.

The commission shall constitute the designated state agency for handling all programs of the federal government relating to mental retardation requiring action within the state which are not the specific responsibility of another state agency under the provisions of federal law, rules or regulations, or which have not been specifically entrusted to another state agency by the Legislature.

Sec. 7. Donations and Grants.—The commission may accept for any of its purposes and functions under this article any and all donations, any grants of money, equipment, supplies, materials, and services (conditional or otherwise) from the United States or any agency thereof, or from any institution, person, firm or corporation, and may receive, utilize, administer and dispose of the same. The commission shall be empowered to comply with all
9 regulations and requirements to qualify for such grants
10 from the United States or agency thereof.
11 The Legislature shall authorize the necessary appropri-
12 ation to carry out the work of the commission.

Sec. 8. Annual Report Required.—On or before Jan-
2 uary one of each year, the commission shall submit to
3 the governor and to the members of the Legislature a
4 report summarizing the work and the activities of the
5 commission for the preceding year.

CHAPTER 6

(House Bill No. 37—Originating in the House Committee
on the Judiciary)

(Passed February 3, 1964; in effect July 1, 1964. Approved by the Governor.)

AN ACT to amend and reenact section six, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to stenographic allowances for judges of circuit courts.

Be it enacted by the Legislature of West Virginia:

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

Article 7. Compensation and Allowances.

Section 6. Allowances to Circuit Judges for Stationery, Postage and Stenographic Help; Additional Compensation from Counties; Payments Therefor.—Each judge of the circuit court shall be allowed an amount not to exceed two hundred fifty dollars per month for the payment of stenographic help necessary in the discharge of the duties of his office, and each judge shall be allowed an amount not to exceed twenty-five dollars per month for the pro-
9 curement of necessary stationery, payment of postage,  
10 and necessary supplies for his office. The judge shall be  
11 reimbursed for the actual amounts expended by him for  
12 stationery, supplies and postage. Payment for steno-  
13 graphic help shall be made directly to the person per-  
14 forming the stenographic work. Such amounts shall be  
15 paid monthly out of the state treasury, but not until the  
16 judge submits an itemized statement covering the same.  
17 Any county court or the board of county commissioners of  
18 Ohio county may pay such additional compensation for  
19 stenographic help for the judge of any circuit which may  
20 be necessary in the discharge of the duties of the office  
21 of the judge of such circuit, or any combination of coun-  
22 ties in any circuit may contribute to such additional  
23 stenographic help. Such additional compensation shall  
24 be paid from county funds directly to the person or per-  
25 sons performing such work.

CHAPTER 7  
(House Bill No. 42—By Mr. Slonaker)

[Passed January 31, 1964; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-v, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the terms of court for the twenty-second circuit.

Be it enacted by the Legislature of West Virginia:

That section one-v, article two, 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:

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

Section

1-v. Twenty-second circuit; terms of court.

Section 1-v. Twenty-second Circuit; Terms of Court—  
2 For the county of Hampshire, on the first Tuesday in  
3 January, April, July and October.
For the county of Hardy, on the third Tuesday in February, June and October.
For the county of Pendleton, on the third Tuesday in March, the fourth Tuesday in July, and the first Tuesday in November.

CHAPTER 8
(Com. Sub. for House Bill No. 17—Originating in the House Committee on Claims)

[Passed February 6, 1964; in effect July 1, 1964. Approved by the Governor.]

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.

Be it enacted by the Legislature of West Virginia:

Section 1. Finding and Declaring Certain Claims against the Adjutant General; Department of Education; Department of Finance and Administration; Department of Mental Health; Department of Public Institutions; Racing Commission; State Road Commission; State Tax Commissioner; State Board of Education; Division of Vocational Rehabilitation; Workmen's Compensation Fund; Department of Welfare and the State Board of Education, to be moral obligations of the state, and directing payment thereof.

Section 1. Finding and Declaring Certain Claims against the Adjutant General; Department of Education; Department of Finance and Administration; Department of Mental Health; Department of Public Institutions; Racing Commission; State Road Commission; State Tax Commissioner; State Board of Education, Division of Vocational Rehabilitation; Workmen's Compensation Fund; Department of Welfare and the State Board of Education, 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 attorney general concerning various claims against the state and 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 to each such claim in the
amount specified below, and directs the auditor to issue
warrants for the payment thereof out of any fund appro-
 priated and available for the purpose.

(a) Claims versus the Adjutant General:

<table>
<thead>
<tr>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>C. F. Nichols</td>
<td>$750.00</td>
</tr>
<tr>
<td>A. A. Booth</td>
<td>$110.82</td>
</tr>
<tr>
<td>William Roth</td>
<td>$84.45</td>
</tr>
<tr>
<td>Julius Corbin</td>
<td>$180.03</td>
</tr>
<tr>
<td>Tri-City Traction Company</td>
<td>$84.08</td>
</tr>
<tr>
<td>Ernie and Avanel Williams</td>
<td>$600.00</td>
</tr>
<tr>
<td>Daniel Huisjack</td>
<td>$93.46</td>
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</table>

(b) Claim versus Department of Education:

<table>
<thead>
<tr>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thomas Edward Marion</td>
<td>$325.00</td>
</tr>
</tbody>
</table>

(c) Claims versus Department of Finance and Administration:

<table>
<thead>
<tr>
<th>Name</th>
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</tr>
</thead>
<tbody>
<tr>
<td>United Fuel Gas Company</td>
<td>$10,052.70</td>
</tr>
<tr>
<td>West Virginia Heating &amp; Plumb-</td>
<td>$469.90</td>
</tr>
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</table>

(d) Claims versus Department of Mental Health:

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<thead>
<tr>
<th>Name</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Woodrums’</td>
<td>$700.00</td>
</tr>
<tr>
<td>Kraus Brothers</td>
<td>$1,171.12</td>
</tr>
<tr>
<td>Kanawha Banking &amp; Trust Company, Adm</td>
<td>$800.00</td>
</tr>
<tr>
<td>of Estate of Rader W. Haworth, deceased</td>
<td></td>
</tr>
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</table>

(e) Claims versus Department of Public Institutions:

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<tr>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>County Court of Raleigh County</td>
<td>$350.00</td>
</tr>
<tr>
<td>Lelia Hall, et al</td>
<td>$1,377.89</td>
</tr>
<tr>
<td>Capitol Restaurant Equipment Company</td>
<td>$1,250.00</td>
</tr>
<tr>
<td>Ada Poole</td>
<td>$5,000.00</td>
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</table>

(f) Claim versus Racing Commission:

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<tr>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harry D. Keith</td>
<td>$938.32</td>
</tr>
<tr>
<td>Claimant Name</td>
<td>Claim Amount</td>
</tr>
<tr>
<td>---------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Board of Education of McDowell County</td>
<td>502.34</td>
</tr>
<tr>
<td>Mrs. John Hanchock</td>
<td>69.27</td>
</tr>
<tr>
<td>Frank L. Adkins</td>
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<tr>
<td>Ambrose Ellis</td>
<td>102.49</td>
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<td>Sallie Adkins</td>
<td>141.16</td>
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AN ACT to amend and reenact section twelve, article seventeen, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to mileage fees for constables in criminal cases.

Be it enacted by the Legislature of West Virginia:

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

Article 17. Fees, Fines and Costs.

Section 12. Fees of Constables in Criminal Cases.—
Every constable shall be entitled to the following fees in criminal cases:

1. For an arrest in case of felony ................................ 3.50
2. For an arrest in cases other than felony ......................... 3.00
3. For serving a subpoena .................................................. 50
4. For executing a search warrant ..................................... 2.50
5. For summoning a jury in criminal action ......................... 1.50
6. Witness fee constable .................................................. 50
7. In addition to above fees, constables shall be allowed five cents for each mile of necessary travel in the performance of their duties, and ten cents per mile for transporting prisoners, if such mileage fees shall exceed the sum of one dollar.
8. In cases of search warrants and proceedings under article one, chapter sixty-two of this code, the fees of the constable shall be chargeable to the county, shall be audited and paid as other claims of like nature by the county court.
9. In criminal cases, other than felony, such fees shall be charged and paid as provided in section fifteen, article five, chapter seven of this code, and section eight, article eighteen of this chapter.

CHAPTER 10

(Com. Sub. for House Bill No. 21—Originating in the House Committee on Counties, Districts and Municipalities)

[Passed February 6, 1964; in effect July 1, 1964. Approved by the Governor.]

AN ACT to amend and reenact section five, sections five-(one) through five-(fifty-four), inclusive, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact section one, sections one-(one) through one-(five-five), inclusive; section five, sections five-(one) through five-(five-five), inclusive; section six, sections six-(one) through six-(five-five), inclusive; article seven, chapter seven of said code; and to amend and reenact section five, sections five-(one) through five-(five-five), inclusive, article two, chapter eleven of said code, all relating to salaries of certain county officers and assistants.
Be it enacted by the Legislature of West Virginia:

That section five, sections five-(one) through five-(fifty-four), inclusive, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one, sections one-(one) through one-(fifty-five), inclusive; section five, sections five-(one) through five-(fifty-five), inclusive; section six, sections six-(one) through six-(fifty-five), inclusive; article seven, chapter seven of said code be amended and reenacted; and that section five, sections five-(one) through five-(fifty-five), inclusive, article two, chapter eleven of said code be amended and reenacted, all to read as follows:

Chapter 7. COUNTY COURTS AND OFFICERS.
11. TAXATION.

CHAPTER 7. COUNTY COURTS AND OFFICERS.


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.

Section 5. Duties of County Commissioners and Payment for Services Other Than Services in Court.—It shall be the duty of the county commissioners of each county to visit each quarter and inspect institutions within their county for housing and caring for the poor, to inspect the jails, and to arrange for the feeding and care of the prisoners therein, and to investigate the conditions of the poor within their county, not housed within such institutions; to visit detention homes for children within their counties, if any, and to visit and inspect bridges and bridge approaches under their control; to provide for and have general supervision over the repair and maintenance of the county courthouse, jails, houses for the poor and other county property, so as to prevent the undue deterioration thereof; to supervise and control the maintenance and operation of airport or airports owned and/or operated by the county court; and to supervise and control the purchase, erection and maintenance of airport facil-
19 ities; to supervise and control the purchase of furniture, 
20 fixtures and equipment, and janitors' and other supplies, 
21 for their county; to attend the annual meeting of county 
22 assessors, and such district meetings as may be called by 
23 the state tax commissioner, on matters pertaining to the 
24 work of the county assessors and the county courts as 
25 boards of review and equalization; to review and equal- 
26 ize the assessments made by the assessors; to inspect and 
27 review the lists of property, both real and personal, made 
28 up by the assessor and his deputies for taxable purposes, 
29 and to point out to the assessor any property, real or per- 
30 sonal, which the said assessors of their respective counties 
31 may have overlooked or omitted to place on said tax lists; 
32 to call to the attention of the assessor all real estate or 
33 personal property belonging to churches, lodges, schools 
34 or other charitable institutions which may have been 
35 overlooked or omitted by the assessor or his deputies in 
36 making up his lists of property for entry on the land and 
37 personal property books; to cooperate with the county 
38 public assistance council and supervise the general man- 
39 agement of the fiscal affairs and business of each county; 
40 and as a further part of their duties they shall be empow- 
41 ered to purchase, lease, rent, control, supervise, inspect, 
42 maintain and erect public parks, playgrounds and recre- 
43 ational facilities, to purchase, lease or rent equipment 
44 therefor, and to employ qualified recreational directors 
45 and personnel; to construct new Four-H camps on county 
46 property; to operate stone quarries and sand deposits on 
47 county-owned or leased property; to construct buildings 
48 for or aid in constructing and/or equipping civilian de- 
49 fense buildings on sites approved by state office of civilian 
50 defense; and to operate dog pounds for county-municipal- 
51 ities; and to purchase, lease, rent, control, supervise, in- 
52 spect, maintain and erect public markets and to purchase, 
53 rent or lease equipment therefor, and to employ qualified 
54 personnel to operate such public markets; and as a fur- 
55 ther part of their duties they shall be empowered to pur- 
56 chase, lease, rent, control, supervise, inspect, maintain 
57 and erect county mental health clinics and engage in any 
58 program designed for the betterment of the mental and 
59 physical well-being of the residents of their county, and
Compensation shall be allowed and paid out of the county treasury, in the same manner as salaries are paid, to each county commissioner of each county (except as otherwise provided by law for the county of Ohio), for services performed for such county concerning the visiting of the poor, inspection of jails, bridges and bridge approaches, and for visiting detention homes for children; and for providing for and supervising the repair and maintenance of the county courthouse, jails, houses for the poor and other county property; for supervising and controlling the maintenance and operation of airport or airports owned and/or operated by the county court, and supervising and controlling the purchase, erection and maintenance of airport facilities; and for supervising and controlling the purchase of furniture, fixtures and equipment and janitors' and other supplies of their county; and for attending the annual meeting of assessors and such district meetings as may be called by the state tax commissioner, on matters pertaining to the work of assessors and county courts as boards of review and equalization; for reviewing and equalizing the assessments made by the assessors; for inspecting and reviewing the lists of property, both real and personal, made up by the assessor and his deputies for taxable purposes, and for pointing out to the assessor any property, real or personal, which the said assessors of their respective counties may have overlooked or omitted to place on said tax lists; for calling to the attention of the assessor all real estate or personal property belonging to churches, lodges, schools or other charitable institutions which may have been overlooked or omitted by the assessor or his deputies in making up his lists of property for entry on the land and personal property books; and for duties of the county commissioners in cooperating with the county public assistance council; for purchasing, leasing, renting, controlling, supervising, inspecting, maintaining and erecting public parks, playgrounds, and recreational facilities, and the purchasing, leasing or renting the equipment therefor, and employing qualified recreational directors and
personnel therefor; for constructing new Four-H camps on county property; operating stone quarries and sand deposits on county-owned or leased property; constructing buildings for or aiding in construction and/or equipping civilian defense buildings on sites approved by state office of civilian defense; operating dog pounds for county-municipalities; and to purchase, lease, rent, control, supervise, inspect, maintain and erect public markets and to purchase, rent or lease equipment therefor, and to employ qualified personnel to operate such public markets: for constructing fall-out shelters and aiding individuals to construct fall-out shelters through furnishing available information; for purchasing, leasing, renting, controlling, supervising, inspecting, maintaining and/or erecting county mental health clinics and/or engaging in programs for the betterment of the mental and/or physical well-being of the residents of their county; and for supervising the general management of the fiscal affairs and business of each county, within their counties, and other business by such commissioners, in addition to compensation for services in court, the sums of money hereinafter provided in the following sections five-(one) to five-(fifty-four) inclusive.

Sec. 5-(1). Compensation of County Commissioners—Barbour County.—For the county of Barbour, one hundred twenty-five dollars per month.

Sec. 5-(2). Same—Berkeley County.—For the county of Berkeley, the president of the court two hundred twenty-five dollars and other members of the court two hundred dollars per month.

Sec. 5-(3). Same—Boone County.—For the county of Boone, one hundred fifty dollars per month.

Sec. 5-(4). Same—Braxton County.—For the county of Braxton, the president of the court eighty-five dollars and the other members of the court seventy-five dollars per month.

Sec. 5-(5). Same—Brooke County.—For the county of Brooke, one hundred twenty-five dollars per month.
Sec. 5-(6). Same—Cabell County.—For the county of Cabell, five hundred dollars per month.

Sec. 5-(7). Same—Calhoun County.—For the county of Calhoun, seventy-five dollars per month.

Sec. 5-(8). Same—Clay County.—For the county of Clay, seventy-five dollars per month.

Sec. 5-(9). Same—Doddridge County.—For the county of Doddridge, eighty-five dollars per month.

Sec. 5-(10). Same—Fayette County.—For the county of Fayette, two hundred fifty dollars per month.

Sec. 5-(11). Same—Gilmer County.—For the county of Gilmer, seventy-five dollars per month.

Sec. 5-(12). Same—Grant County.—For the county of Grant, ninety dollars per month.

Sec. 5-(13). Same—Greenbrier County.—For the county of Greenbrier, one hundred twenty-five dollars per month.

Sec. 5-(14). Same—Hampshire County.—For the county of Hampshire, the president of the court one hundred dollars and the other members of the court seventy-five dollars per month.

Sec. 5-(15). Same—Hancock County.—For the county of Hancock, the president of the court three hundred dollars and the other members of the court two hundred fifty dollars per month.

Sec. 5-(16). Same—Hardy County.—For the county of Hardy, ninety dollars per month.

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

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

Sec. 5-(19). Same—Jefferson County.—For the county of Jefferson, the president of the court one hundred twenty-five dollars and the other members of the court one hundred dollars per month.
Sec. 5-(20). Same—Kanawha County.—For the county of Kanawha, six hundred twenty dollars per month.

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

Sec. 5-(22). Same—Lincoln County.—For the county of Lincoln, the president of the court one hundred seventy-five dollars and the other members of the court one hundred fifty dollars per month.

Sec. 5-(23). Same—Logan County.—For the county of Logan, the president of the court three hundred fifty dollars and the other members of the court two hundred seventy-five dollars per month.

Sec. 5-(24). Same—Marion County.—For the county of Marion, four hundred dollars per month.

Sec. 5-(25). Same—Marshall County.—For the county of Marshall, two hundred dollars per month.

Sec. 5-(26). Same—Mason County.—For the county of Mason, two hundred dollars per month.

Sec. 5-(27). Same—McDowell County.—For the county of McDowell, two hundred twenty-five dollars per month.

Sec. 5-(28). Same—Mercer County.—For the county of Mercer, the president of the court three hundred fifty dollars and the other members of the court three hundred dollars per month.

Sec. 5-(29). Same—Mineral County.—For the county of Mineral, the president of the court one hundred twenty-five dollars and the other members of the court one hundred dollars per month.

Sec. 5-(30). Same—Mingo County.—For the county of Mingo, not less than two hundred twenty-five dollars nor more than three hundred dollars per month.

Sec. 5-(31). Same—Morgan County.—For the county of Morgan, eighty-five dollars per month.

Sec. 5-(32). Same—Monroe County.—For the county of Monroe, fifty dollars per month.
Sec. 5-(33). Same—Monongalia County.—For the county of Monongalia, three hundred dollars per month.

Sec. 5-(34). Same—Nicholas County.—For the county of Nicholas, seventy-five dollars per month.

Sec. 5-(35). Same—Pendleton County.—For the county of Pendleton, the president of the court sixty-five dollars and the other members of the court forty-five dollars per month.

Sec. 5-(36). Same—Pleasants County.—For the county of Pleasants, seventy-five dollars per month.

Sec. 5-(37). Same—Pocahontas County.—For the county of Pocahontas, fifty dollars per month.

Sec. 5-(38). Same—Preston County.—For the county of Preston, the president of the court seventy-five dollars and other members of the court sixty dollars per month.

Sec. 5-(39). Same—Putnam County.—For the county of Putnam, one hundred fifty dollars per month.

Sec. 5-(40). Same—Raleigh County.—For the county of Raleigh, the president of the court two hundred fifty dollars and other members of the court two hundred twenty-five dollars per month.

Sec. 5-(41). Same—Randolph County.—For the county of Randolph, one hundred twenty-five dollars per month.

Sec. 5-(42). Same—Ritchie County.—For the county of Ritchie, ninety dollars per month.

Sec. 5-(43). Same—Roane County.—For the county of Roane, ninety dollars per month.

Sec. 5-(44). Same—Summers County.—For the county of Summers, one hundred dollars per month.

Sec. 5-(45). Same—Taylor County.—For the county of Taylor, one hundred dollars per month.

Sec. 5-(46). Same—Tucker County.—For the county of Tucker, fifty dollars per month.

Sec. 5-(47). Same—Tyler County.—For the county of Tyler, the president of the court ninety-five dollars and other members of the court eighty-five dollars per month.
Sec. 5-(48). Same—Upshur County.—For the county of Upshur, one hundred thirty dollars per month.

Sec. 5-(49). Same—Wayne County.—For the county of Wayne, three hundred dollars per month.

Sec. 5-(50). Same—Webster County.—For the county of Webster, one hundred dollars per month.

Sec. 5-(51). Same—Wetzel County.—For the county of Wetzel, one hundred sixty dollars per month.

Sec. 5-(52). Same—Wirt County.—For the county of Wirt, fifty dollars per month.

Sec. 5-(53). Same—Wood County.—For the county of Wood, three hundred fifty dollars per month.

Sec. 5-(54). Same—Wyoming County.—For the county of Wyoming, the president of the court two hundred fifty dollars and the other members of the court two hundred twenty-five dollars per month.

Article 7. Salaries; Deputies and Assistants and Their Salaries.

Section 1. Salaries of Sheriffs.—The annual compensation of the sheriff of each county shall, on and after January first, one thousand nine hundred sixty-five, be in the amount set forth in sections one-(one) to one-(fifty-five), inclusive, of this article.

Sec. 1-(1). Salary of Sheriff—Barbour County.—For the county of Barbour, four thousand two hundred dollars.

Sec. 1-(2). Same—Berkeley County.—For the county of Berkeley, five thousand four hundred dollars.

Sec. 1-(3). Same—Boone County.—For the county of Boone, five thousand five hundred dollars.
Sec. 1-(4). Same—Braxton County.—For the county of Braxton, five thousand dollars.

Sec. 1-(5). Same—Brooke County.—For the county of Brooke, five thousand dollars.

Sec. 1-(6). Same—Cabell County.—For the county of Cabell, seven thousand five hundred dollars.

Sec. 1-(7). Same—Calhoun County.—For the county of Calhoun, three thousand seven hundred dollars.

Sec. 1-(8). Same—Clay County.—For the county of Clay, four thousand dollars.

Sec. 1-(9). Same—Doddridge County.—For the county of Doddridge, four thousand two hundred dollars.

Sec. 1-(10). Same—Fayette County.—For the county of Fayette, seven thousand five hundred dollars.

Sec. 1-(11). Same—Gilmer County.—For the county of Gilmer, four thousand eight hundred dollars.

Sec. 1-(12). Same—Grant County.—For the county of Grant, three thousand dollars.

Sec. 1-(13). Same—Greenbrier County.—For the county of Greenbrier, six thousand five hundred dollars.

Sec. 1-(14). Same—Hampshire County.—For the county of Hampshire, three thousand six hundred dollars.

Sec. 1-(15). Same—Hancock County.—For the county of Hancock, four thousand eight hundred dollars.

Sec. 1-(16). Same—Hardy County.—For the county of Hardy, three thousand five hundred dollars.

Sec. 1-(17). Same—Harrison County.—For the county of Harrison, eight thousand dollars.

Sec. 1-(18). Same—Jackson County.—For the county of Jackson, four thousand six hundred dollars.

Sec. 1-(19). Same—Jefferson County.—For the county of Jefferson, five thousand dollars.

Sec. 1-(20). Same—Kanawha County.—For the county of Kanawha, nine thousand dollars.
Sec. 1-(21). **Same—Lewis County.**—For the county of Lewis, four thousand five hundred dollars.

Sec. 1-(22). **Same—Logan County.**—For the county of Logan, eight thousand four hundred dollars.

Sec. 1-(23). **Same—Lincoln County.**—For the county of Lincoln, five thousand two hundred dollars.

Sec. 1-(24). **Same—Marion County.**—For the county of Marion, eight thousand dollars.

Sec. 1-(25). **Same—Marshall County.**—For the county of Marshall, six thousand dollars.

Sec. 1-(26). **Same—Mason County.**—For the county of Mason, four thousand two hundred dollars.

Sec. 1-(27). **Same—Mercer County.**—For the county of Mercer, seven thousand dollars.

Sec. 1-(28). **Same—Mineral County.**—For the county of Mineral, five thousand dollars.

Sec. 1-(29). **Same—Mingo County.**—For the county of Mingo, seven thousand two hundred dollars.

Sec. 1-(30). **Same—Monongalia County.**—For the county of Monongalia, seven thousand two hundred dollars.

Sec. 1-(31). **Same—Monroe County.**—For the county of Monroe, three thousand six hundred dollars.

Sec. 1-(32). **Same—McDowell County.**—For the county of McDowell, seven thousand five hundred dollars.

Sec. 1-(33). **Same—Morgan County.**—For the county of Morgan, three thousand six hundred dollars.

Sec. 1-(34). **Same—Nicholas County.**—For the county of Nicholas, four thousand eight hundred dollars.

Sec. 1-(35). **Same—Ohio County.**—For the county of Ohio, five thousand dollars.

Sec. 1-(36). **Same—Pendleton County.**—For the county of Pendleton, three thousand six hundred dollars.

Sec. 1-(37). **Same—Pleasants County.**—For the county of Pleasants, four thousand two hundred dollars.
Sec. 1-(38). Same — Pocahontas County. — For the county of Pocahontas, three thousand four hundred dollars.

Sec. 1-(39). Same — Preston County. — For the county of Preston, five thousand five hundred dollars.

Sec. 1-(40). Same — Putnam County. — For the county of Putnam, four thousand eight hundred dollars.

Sec. 1-(41). Same — Raleigh County. — For the county of Raleigh, seven thousand eight hundred dollars.

Sec. 1-(42). Same — Randolph County. — For the county of Randolph, six thousand dollars.

Sec. 1-(43). Same — Ritchie County. — For the county of Ritchie, four thousand two hundred dollars.

Sec. 1-(44). Same — Roane County. — For the county of Roane, four thousand six hundred dollars.

Sec. 1-(45). Same — Summers County. — For the county of Summers, four thousand two hundred dollars.

Sec. 1-(46). Same — Taylor County. — For the county of Taylor, not less than four thousand two hundred dollars nor more than four thousand five hundred dollars.

Sec. 1-(47). Same — Tucker County. — For the county of Tucker, three thousand six hundred dollars.

Sec. 1-(48). Same — Tyler County. — For the county of Tyler, four thousand two hundred dollars.

Sec. 1-(49). Same — Upshur County. — For the county of Upshur, three thousand nine hundred dollars.

Sec. 1-(50). Same — Wayne County. — For the county of Wayne, six thousand three hundred dollars.

Sec. 1-(51). Same — Webster County. — For the county of Webster, four thousand two hundred dollars.

Sec. 1-(52). Same — Wetzel County. — For the county of Wetzel, five thousand dollars.

Sec. 1-(53). Same — Wirt County. — For the county of Wirt, three thousand six hundred dollars.
Sec. 1-(54). Same—Wood County.—For the county of Wood, six thousand dollars.

Sec. 1-(55). Same—Wyoming County.—For the county of Wyoming, seven thousand dollars.

Sec. 5. Salaries of Prosecuting Attorneys.—The annual compensation of the prosecuting attorney in each county, including the compensation provided by law for his services as attorney for boards of education and other administrative boards and officers in the county, shall, on and after January one, one thousand nine hundred sixty-five, be in the amounts set forth in sections five-(one) to five-(fifty-five), inclusive, of this article.

Sec. 5-(1). Salary of Prosecuting Attorney—Barbour County.—For the county of Barbour, three thousand eight hundred dollars.

Sec. 5-(2). Same—Berkeley County.—For the county of Berkeley, six thousand dollars.

Sec. 5-(3). Same—Boone County.—For the county of Boone, five thousand five hundred dollars.

Sec. 5-(4). Same—Braxton County.—For the county of Braxton, four thousand dollars.

Sec. 5-(5). Same—Brooke County.—For the county of Brooke, four thousand four hundred dollars.

Sec. 5-(6). Same—Cabell County.—For the county of Cabell, seven thousand dollars.

Sec. 5-(7). Same—Calhoun County.—For the county of Calhoun, three thousand dollars.

Sec. 5-(8). Same—Clay County.—For the county of Clay, three thousand dollars.

Sec. 5-(9). Same—Doddridge County.—For the county of Doddridge, three thousand six hundred dollars.

Sec. 5-(10). Same—Fayette County.—For the county of Fayette, six thousand five hundred dollars.

Sec. 5-(11). Same—Gilmer County.—For the county of Gilmer, three thousand six hundred dollars.
Sec. 5-(12). Same—Grant County.—For the county of Grant, two thousand dollars.

Sec. 5-(13). Same—Greenbrier County.—For the county of Greenbrier, six thousand dollars.

Sec. 5-(14). Same—Hampshire County.—For the county of Hampshire, two thousand six hundred dollars.

Sec. 5-(15). Same—Hancock County.—For the county of Hancock, six thousand dollars.

Sec. 5-(16). Same—Hardy County.—For the county of Hardy, two thousand dollars.

Sec. 5-(17). Same—Harrison County.—For the county of Harrison, nine thousand dollars.

Sec. 5-(18). Same—Jackson County.—For the county of Jackson, three thousand eight hundred dollars.

Sec. 5-(19). Same—Jefferson County.—For the county of Jefferson, five thousand dollars.

Sec. 5-(20). Same—Kanawha County.—For the county of Kanawha, thirteen thousand five hundred dollars.

Sec. 5-(21). Same—Lewis County.—For the county of Lewis, four thousand dollars.

Sec. 5-(22). Same—Lincoln County.—For the county of Lincoln, four thousand eight hundred dollars.

Sec. 5-(23). Same—Logan County.—For the county of Logan, seven thousand two hundred dollars.

Sec. 5-(24). Same—Marion County.—For the county of Marion, eight thousand dollars.

Sec. 5-(25). Same—Marshall County.—For the county of Marshall, six thousand two hundred fifty dollars.

Sec. 5-(26). Same—Mason County.—For the county of Mason, four thousand dollars.

Sec. 5-(27). Same—McDowell County.—For the county of McDowell, seven thousand two hundred dollars.

Sec. 5-(28). Same—Mercer County.—For the county of Mercer, seven thousand dollars.
Sec. 5-(29). Same—Mineral County.—For the county of Mineral, five thousand dollars.

Sec. 5-(30). Same—Mingo County.—For the county of Mingo, seven thousand two hundred dollars.

Sec. 5-(31). Same—Monongalia County.—For the county of Monongalia, seven thousand five hundred dollars.

Sec. 5-(32). Same—Monroe County.—For the county of Monroe, one thousand eight hundred dollars.

Sec. 5-(33). Same—Morgan County.—For the county of Morgan, two thousand six hundred dollars.

Sec. 5-(34). Same—Nicholas County.—For the county of Nicholas, four thousand four hundred dollars.

Sec. 5-(35). Same—Ohio County.—For the county of Ohio, seven thousand five hundred dollars.

Sec. 5-(36). Same—Pendleton County.—For the county of Pendleton, one thousand eight hundred dollars.

Sec. 5-(37). Same—Pleasants County.—For the county of Pleasants, three thousand dollars.

Sec. 5-(38). Same—Pocahontas County.—For the county of Pocahontas, three thousand dollars.

Sec. 5-(39). Same—Preston County.—For the county of Preston, five thousand dollars.

Sec. 5-(40). Same—Putnam County.—For the county of Putnam, four thousand two hundred dollars.

Sec. 5-(41). Same—Raleigh County.—For the county of Raleigh, eight thousand dollars.

Sec. 5-(42). Same—Randolph County.—For the county of Randolph, six thousand dollars.

Sec. 5-(43). Same—Ritchie County.—For the county of Ritchie, three thousand dollars.

Sec. 5-(44). Same—Roane County.—For the county of Roane, three thousand six hundred dollars.

Sec. 5-(45). Same—Summers County.—For the county of Summers, three thousand six hundred dollars.
Sec. 5-(46). Same—Taylor County.—For the county of Taylor, three thousand eight hundred dollars.

Sec. 5-(47). Same—Tucker County.—For the county of Tucker, three thousand two hundred dollars.

Sec. 5-(48). Same—Tyler County.—For the county of Tyler, two thousand eight hundred dollars.

Sec. 5-(49). Same—Upshur County.—For the county of Upshur, three thousand dollars.

Sec. 5-(50). Same—Wayne County.—For the county of Wayne, seven thousand two hundred dollars.

Sec. 5-(51). Same—Webster County.—For the county of Webster, four thousand dollars.

Sec. 5-(52). Same—Wetzel County.—For the county of Wetzel, four thousand eight hundred dollars.

Sec. 5-(53). Same—Wirt County.—For the county of Wirt, one thousand eight hundred dollars.

Sec. 5-(54). Same—Wood County.—For the county of Wood, seven thousand five hundred dollars.

Sec. 5-(55). Same—Wyoming County.—For the county of Wyoming, six thousand six hundred dollars.

Sec. 6. Assistants, Stenographers and Clerks for Prosecuting Attorney; Salaries; When Court May Appoint to Prosecute.—The prosecuting attorneys of the several counties of the state may, with the assent of the county courts of their respective counties, entered of record, appoint to assist them in the discharge of their official duties for and during their respective terms of office, the number of practicing attorneys, stenographers and clerks set forth in sections six-(one) through six-(fifty-five), inclusive, of this article. Each such assistant prosecuting attorney shall take the same oath and may perform the same duties as his principal. Each assistant shall serve at the will and pleasure of his principal and may be removed from office by the circuit court of the county in which he is appointed for any cause for which his principal might be removed.
If in any case the prosecuting attorney and his assistant be unable to act, or if in the opinion of the court it would be improper for him or his assistant to act, the court shall appoint some competent practicing attorney to act in such case. The court shall certify to the county court the performance of such service when completed and recommend to the county court a reasonable allowance for such attorney for such service, and such sum, when allowed by the county court, shall be paid out of the county treasury. No provision of this section shall be construed to prohibit the employment by any person of a competent attorney or attorneys to assist in the prosecution of any person or corporation charged with crime.

The county courts of the several counties shall compensate the assistant prosecuting attorneys, stenographers and clerks of their respective counties in accordance with the following annual salary provisions:

(1) In counties for which definite salaries are fixed by provisions of section six-(one) through six-(fifty-five), inclusive, of this article, such definite salaries shall be paid.

(2) In counties for which minimum and maximum salary limits are fixed by provisions of sections six-(one) through six-(fifty-five), inclusive, of this article, the salaries shall be fixed and paid within such limits.

(3) In the counties for which salaries are not fixed and limited by provisions of sections six-(one) through six-(fifty-five), inclusive, of this article, reasonable salaries shall be fixed and paid by the respective county courts.

Such salaries and compensation shall be paid monthly, semi-monthly or otherwise as provided by law. In any case wherein provision is not made in this article for payment of the salary of an assistant prosecuting attorney, the principal shall pay and compensate such assistant for services rendered. The compensation and salaries to be paid assistant attorneys as provided in this article shall include compensation provided by law for such assistant's services as attorney for the county board of education and other administrative boards and officers of his county.
Sec. 6-(1). Same—Barbour County.—For the county of Barbour, one assistant attorney, one thousand dollars; one stenographer, two thousand four hundred dollars.

Sec. 6-(2). Same—Berkeley County.—For the county of Berkeley, one assistant attorney, not less than three thousand four hundred dollars nor more than four thousand dollars; one stenographer, not less than three thousand four hundred dollars nor more than four thousand dollars.

Sec. 6-(3). Same—Boone County.—For the county of Boone, one assistant attorney, three thousand eight hundred dollars; one stenographer at three thousand one hundred dollars.

Sec. 6-(4). Same—Braxton County.—For the county of Braxton, one assistant attorney; one stenographer, not more than two thousand four hundred dollars.

Sec. 6-(5). Same—Brooke County.—For the county of Brooke, one assistant attorney, three thousand eight hundred dollars; one stenographer, two thousand seven hundred dollars.

Sec. 6-(6). Same—Cabell County.—For the county of Cabell, three assistant attorneys, not more than six thousand five hundred dollars each; two stenographers, not more than four thousand dollars each.

Sec. 6-(7). Same—Calhoun County.—For the county of Calhoun, one assistant attorney, three hundred dollars; one stenographer, at not more than one thousand seven hundred dollars.

Sec. 6-(8). Same—Clay County.—For the county of Clay, one assistant attorney; one clerk or stenographer or in lieu thereof one practicing attorney, not less than two thousand two hundred nor more than two thousand four hundred dollars.

Sec. 6-(9). Same—Doddridge County.—For the county of Doddridge, one assistant attorney; one stenographer, not more than two thousand four hundred dollars.

Sec. 6-(10). Same—Fayette County.—For the county
of Fayette, one assistant attorney, five thousand five hundred dollars; one stenographer at a salary to be fixed by the county court.

Sec. 6-(11). Same—Gilmer County.—For the county of Gilmer, one assistant attorney; one stenographer, not more than one thousand eight hundred dollars.

Sec. 6-(12). Same—Grant County.—For the county of Grant, one assistant attorney; one stenographer or clerk, not more than one thousand five hundred dollars.

Sec. 6-(13). Same—Greenbrier County.—For the county of Greenbrier, one assistant attorney; one stenographer, not less than four thousand two hundred nor more than four thousand five hundred dollars.

Sec. 6-(14). Same—Hampshire County.—For the county of Hampshire, one assistant attorney; one stenographer, two thousand two hundred dollars.

Sec. 6-(15). Same—Hancock County.—For the county of Hancock, one assistant attorney, not less than three thousand nor more than three thousand nine hundred dollars; one stenographer, not more than three thousand dollars.

Sec. 6-(16). Same—Hardy County.—For the county of Hardy, one assistant attorney; one stenographer or one clerk at a salary fixed by the prosecuting attorney, not to exceed one thousand eight hundred dollars.

Sec. 6-(17). Same—Harrison County.—For the county of Harrison, first assistant attorney, seven thousand eight hundred dollars; second assistant attorney, six thousand dollars; two stenographers, not less than nine hundred dollars nor more than three thousand six hundred dollars for each.

Sec. 6-(18). Same—Jackson County.—For the county of Jackson, one assistant attorney, not less than six hundred nor more than one thousand two hundred dollars; one stenographer, not less than one thousand six hundred dollars nor more than two thousand two hundred dollars.

Sec. 6-(19). Same—Jefferson County.—For the county
of Jefferson, the prosecuting attorney may employ a stenographer for his office at a salary of not less than one thousand eight hundred dollars nor more than two thousand eight hundred dollars per annum, payable out of the county treasury to be fixed by the said prosecuting attorney of said county of Jefferson.

Sec. 6-(20). Same—Kanawha County.—For the county of Kanawha, first assistant attorney, not less than six thousand nor more than nine thousand six hundred dollars, three assistant attorneys, not less than six thousand nor more than nine thousand dollars each, and stenographers and clerks at a salary to be fixed by the county court payable out of the county treasury of said county of Kanawha.

Sec. 6-(21). Same—Lewis County.—For the county of Lewis, one assistant attorney, not more than one thousand eight hundred dollars; one stenographer, not less than six hundred nor more than one thousand eight hundred dollars.

Sec. 6-(22). Same—Lincoln County.—For the county of Lincoln, one assistant attorney, not more than three thousand dollars; one stenographer or clerk, not more than three thousand six hundred dollars.

Sec. 6-(23). Same—Logan County.—For the county of Logan, one assistant attorney, at six thousand five hundred dollars; one stenographer, not more than three thousand nine hundred dollars; second stenographer, not more than three thousand three hundred dollars.

Sec. 6-(24). Same—Marion County.—For the county of Marion, first assistant attorney, six thousand dollars; second assistant attorney, five thousand four hundred dollars; one stenographer, not more than three thousand eight hundred dollars.

Sec. 6-(25). Same—Marshall County.—For the county of Marshall, one assistant attorney, at two thousand four hundred dollars; one stenographer or clerk, not less than two thousand eight hundred dollars nor more than three thousand six hundred dollars.
Sec. 6-(26). Same—Mason County.—For the county of Mason, one assistant attorney, not less than one thousand five hundred nor more than two thousand dollars; one stenographer, two thousand dollars.

Sec. 6-(27). Same—McDowell County.—For the county of McDowell, first assistant attorney, not less than three thousand nor more than five thousand four hundred dollars; second assistant attorney, not less than three thousand nor more than five thousand dollars; one stenographer, not less than three thousand three hundred nor more than three thousand six hundred dollars.

Sec. 6-(28). Same—Mercer County.—For the county of Mercer, one assistant attorney, at six thousand dollars; one stenographer or clerk, not more than three thousand nine hundred dollars.

Sec. 6-(29). Same—Mineral County.—For the county of Mineral, one assistant attorney, not more than one thousand two hundred dollars; one stenographer, not more than three thousand dollars.

Sec. 6-(30). Same—Mingo County.—For the county of Mingo, one assistant attorney, not more than six thousand dollars; one stenographer, not more than four thousand two hundred dollars.

Sec. 6-(31). Same—Monongalia County.—For the county of Monongalia, one assistant attorney, not less than four thousand dollars nor more than five thousand dollars; one stenographer, not less than two thousand four hundred nor more than three thousand six hundred dollars.

Sec. 6-(32). Same—Monroe County.—For the county of Monroe, one assistant attorney; one stenographer, not more than six hundred dollars.

Sec. 6-(33). Same—Morgan County.—For the county of Morgan, one assistant attorney.

Sec. 6-(34). Same—Nicholas County.—For the county of Nicholas, one assistant attorney, not more than one thousand two hundred dollars; one stenographer or clerk, at a salary to be fixed by the county court.
Sec. 6-(35). Same—Ohio County.—For the county of Ohio, first assistant attorney, at five thousand dollars; second assistant attorney, at four thousand five hundred dollars; third assistant attorney, at four thousand dollars; one stenographer, not more than three thousand three hundred dollars; second stenographer, not more than one thousand two hundred dollars.

Sec. 6-(36). Same—Pendleton County.—For the county of Pendleton, one assistant attorney; one stenographer or clerk, not more than one thousand five hundred dollars.

Sec. 6-(37). Same—Pleasants County.—For the county of Pleasants, one stenographer, not more than two thousand four hundred dollars.

Sec. 6-(38). Same—Pocahontas County.—For the county of Pocahontas, one assistant attorney; one stenographer, not more than two thousand one hundred dollars.

Sec. 6-(39). Same—Preston County.—For the county of Preston, one assistant attorney at a salary not exceeding three thousand six hundred dollars; one stenographer, not more than three thousand six hundred dollars.

Sec. 6-(40). Same—Putnam County.—For the county of Putnam, one assistant attorney, not more than three thousand dollars; one stenographer, not more than three thousand six hundred dollars.

Sec. 6-(41). Same—Raleigh County.—For the county of Raleigh, one assistant attorney, at six thousand dollars; one stenographer, not more than three thousand six hundred dollars.

Sec. 6-(42). Same—Randolph County.—For the county of Randolph, one assistant attorney, not more than three thousand six hundred dollars; one stenographer, not less than two thousand seven hundred nor more than three thousand six hundred dollars.

Sec. 6-(43). Same—Ritchie County.—For the county of Ritchie, one assistant attorney; one stenographer, not
less than one thousand six hundred dollars nor more than two thousand four hundred dollars.

Sec. 6-(44). Same—Roane County.—For the county of Roane, one assistant attorney; one stenographer, not less than one thousand five hundred nor more than two thousand four hundred dollars.

Sec. 6-(45). Same—Summers County.—For the county of Summers, one assistant attorney, not less than one thousand nor more than two thousand dollars; one stenographer, not less than one thousand five hundred nor more than three thousand dollars.

Sec. 6-(46). Same—Taylor County.—For the county of Taylor, one assistant attorney; one stenographer, not less than one thousand two hundred nor more than three thousand dollars.

Sec. 6-(47). Same—Tucker County.—For the county of Tucker, one assistant attorney.

Sec. 6-(48). Same—Tyler County.—For the county of Tyler, one assistant attorney; one stenographer, not more than one thousand eight hundred dollars.

Sec. 6-(49). Same—Upshur County.—For the county of Upshur, one assistant attorney, not more than one thousand two hundred dollars; one stenographer, not more than one thousand two hundred dollars.

Sec. 6-(50). Same—Wayne County.—For the county of Wayne, one assistant attorney, at five thousand dollars; one stenographer, three thousand six hundred dollars.

Sec. 6-(51). Same—Webster County.—For the county of Webster, one stenographer, two thousand four hundred dollars.

Sec. 6-(52). Same—Wetzel County.—For the county of Wetzel, one assistant attorney, not less than nine hundred dollars nor more than one thousand two hundred dollars; one stenographer, not more than three thousand nine hundred eighty dollars.

Sec. 6-(53). Same—Wirt County.—For the county of Wirt, one stenographer or clerk at not more than nine hundred dollars.
Sec. 6-(54). Same—Wood County.—For the county of Wood, one assistant attorney, who shall maintain offices in the courthouse, at not more than five thousand four hundred dollars; one stenographer, at three thousand six hundred dollars; and in addition thereto, the prosecuting attorney may, with the consent of the county court, appoint one additional assistant attorney at not more than two thousand four hundred dollars, and additional stenographers at salaries to be fixed by the county court.

Sec. 6-(55). Same—Wyoming County.—For the county of Wyoming, one assistant attorney, not less than two thousand six hundred nor more than four thousand eight hundred dollars; one stenographer at salary fixed by the county court.

CHAPTER 11. TAXATION

Article 2. Assessors.

Section 5. Annual salary of assessors.

5-(1) to 5-(55). Salaries of assessors of the various counties of the state.

Section 5. Annual Salary of Assessors.—The annual salary of the assessor in each county shall, on and after January one, one thousand nine hundred sixty-five, be in the amounts set forth in sections five-(one) to five-(fifty-five), inclusive, of this article.

Sec. 5-(1). Salary of Assessor—Barbour County.—For the county of Barbour, three thousand six hundred dollars.

Sec. 5-(2). Same—Berkeley County.—For the county of Berkeley, five thousand dollars.

Sec. 5-(3). Same—Boone County.—For the county of Boone, five thousand five hundred dollars.

Sec. 5-(4). Same—Braxton County.—For the county of Braxton, three thousand six hundred dollars.

Sec. 5-(5). Same—Brooke County.—For the county of Brooke, four thousand eight hundred dollars.

Sec. 5-(6). Same—Cabell County.—For the county of Cabell, seven thousand two hundred dollars.
Sec. 5-(7). Same—Calhoun County.—For the county of Calhoun, three thousand dollars.

Sec. 5-(8). Same—Clay County.—For the county of Clay, three thousand six hundred dollars.

Sec. 5-(9). Same—Doddridge County.—For the county of Doddridge, three thousand six hundred dollars.

Sec. 5-(10). Same—Fayette County.—For the county of Fayette, five thousand five hundred dollars.

Sec. 5-(11). Same—Gilmer County.—For the county of Gilmer, three thousand six hundred dollars.

Sec. 5-(12). Same—Grant County.—For the county of Grant, three thousand dollars.

Sec. 5-(13). Same—Greenbrier County.—For the county of Greenbrier, six thousand dollars.

Sec. 5-(14). Same—Hampshire County.—For the county of Hampshire, three thousand three hundred dollars.

Sec. 5-(15). Same—Hancock County.—For the county of Hancock, six thousand dollars.

Sec. 5-(16). Same—Hardy County.—For the county of Hardy, three thousand three hundred dollars.

Sec. 5-(17). Same—Harrison County.—For the county of Harrison, eight thousand dollars.

Sec. 5-(18). Same—Jackson County.—For the county of Jackson, four thousand dollars.

Sec. 5-(19). Same—Jefferson County.—For the county of Jefferson, four thousand eight hundred dollars.

Sec. 5-(20). Same—Kanawha County.—For the county of Kanawha, seven thousand five hundred dollars.

Sec. 5-(21). Same—Lewis County.—For the county of Lewis, four thousand dollars.

Sec. 5-(22). Same—Lincoln County.—For the county of Lincoln, four thousand eight hundred dollars.

Sec. 5-(23). Same—Logan County.—For the county of Logan, eight thousand one hundred dollars.
Sec. 5-(24). Same—Marion County.—For the county of Marion, seven thousand dollars.

Sec. 5-(25). Same—Marshall County.—For the county of Marshall, five thousand two hundred dollars.

Sec. 5-(26). Same—Mason County.—For the county of Mason, four thousand two hundred dollars.

Sec. 5-(27). Same—McDowell County.—For the county of McDowell, six thousand dollars.

Sec. 5-(28). Same—Mercer County.—For the county of Mercer, six thousand two hundred fifty dollars.

Sec. 5-(29). Same—Mineral County.—For the county of Mineral, four thousand two hundred dollars.

Sec. 5-(30). Same—Mingo County.—For the county of Mingo, seven thousand two hundred dollars.

Sec. 5-(31). Same—Monongalia County.—For the county of Monongalia, five thousand five hundred dollars.

Sec. 5-(32). Same—Monroe County.—For the county of Monroe, three thousand dollars.

Sec. 5-(33). Same—Morgan County.—For the county of Morgan, three thousand six hundred dollars.

Sec. 5-(34). Same—Nicholas County.—For the county of Nicholas, four thousand dollars.

Sec. 5-(35). Same—Ohio County.—For the county of Ohio, seven thousand nine hundred dollars.

Sec. 5-(36). Same—Pendleton County.—For the county of Pendleton, three thousand two hundred dollars.

Sec. 5-(37). Same—Pleasants County.—For the county of Pleasants, three thousand six hundred dollars.

Sec. 5-(38). Same—Pocahontas County.—For the county of Pocahontas, two thousand eight hundred dollars.

Sec. 5-(39). Same—Preston County.—For the county of Preston, four thousand eight hundred dollars.
Sec. 5-(40). Same—Putnam County.—For the county of Putnam, four thousand two hundred dollars.

Sec. 5-(41). Same—Raleigh County.—For the county of Raleigh, seven thousand dollars.

Sec. 5-(42). Same—Randolph County.—For the county of Randolph, five thousand eight hundred dollars.

Sec. 5-(43). Same—Ritchie County.—For the county of Ritchie, four thousand dollars.

Sec. 5-(44). Same—Roane County.—For the county of Roane, four thousand four hundred dollars.

Sec. 5-(45). Same—Summers County.—For the county of Summers, three thousand six hundred dollars.

Sec. 5-(46). Same—Taylor County.—For the county of Taylor, three thousand eight hundred dollars.

Sec. 5-(47). Same—Tucker County.—For the county of Tucker, three thousand two hundred dollars.

Sec. 5-(48). Same—Tyler County.—For the county of Tyler, three thousand six hundred dollars.

Sec. 5-(49). Same—Upshur County.—For the county of Upshur, three thousand two hundred dollars.

Sec. 5-(50). Same—Wayne County.—For the county of Wayne, five thousand seven hundred dollars.

Sec. 5-(51). Same—Webster County.—For the county of Webster, three thousand eight hundred dollars.

Sec. 5-(52). Same—Wetzel County.—For the county of Wetzel, five thousand dollars.

Sec. 5-(53). Same—Wirt County.—For the county of Wirt, three thousand dollars.

Sec. 5-(54). Same—Wood County.—For the county of Wood, five thousand dollars.

Sec. 5-(55). Same—Wyoming County.—For the county of Wyoming, seven thousand dollars.

The salaries now set forth in the code shall remain in full force and effect until the effective dates herein set out.
AN ACT to amend and reenact sections two-(fifteen), two-(twenty-eight), two-(fifty-two), three-(fourteen), three-(fifteen), three-(twenty-eight) and three-(fifty-two), article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salaries of county clerks and circuit clerks.

Be it enacted by the Legislature of West Virginia:

That sections two-(fifteen), two-(twenty-eight), two-(fifty-two), three-(fourteen), three-(fifteen), three-(twenty-eight) and three-(fifty-two), 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:

Article 7. Salaries; Deputies and Assistants and Their Salaries.

Section 2-(15). Salary of county clerk, Harrison county.

Section 2-(28). Salary of county clerk, Mingo county.

Section 2-(52). Salary of county clerk, Wyoming county.

Section 3-(14). Salary of circuit clerk, Hancock county.

Section 3-(15). Salary of circuit clerk, Harrison county.

Section 3-(28). Salary of circuit clerk, Mingo county.

Section 3-(52). Salary of circuit clerk, Wyoming county.

Section 2-(15). Salary of County Clerk—Harrison County.—For the county of Harrison, eight thousand dollars.

Sec. 2-(28). Same—Mingo County.—For the county of Mingo, seven thousand two hundred dollars.

Sec. 2-(52). Same—Wyoming County.—For the county of Wyoming, six thousand six hundred dollars.

Sec. 3-(14). Salary of Circuit Clerk—Hancock County.—For the county of Hancock, six thousand five hundred dollars.

Sec. 3-(15). Same—Harrison County.—For the county of Harrison, eight thousand dollars.
Sec. 3-(28). Same—Mingo County.—For the county of Mingo, seven thousand two hundred dollars.

Sec. 3-(52). Same—Wyoming County.—For the county of Wyoming, six thousand six hundred dollars.

The foregoing officials shall receive the salaries now fixed by law until the provisions of this act applicable thereto become effective.

CHAPTER 12

(House Bill No. 3—By Mr. Brotherton and Mr. Seibert)

[Passed January 30, 1964; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections seventeen and eighteen, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend article ten of said chapter by adding thereto five new sections, designated sections twenty-five, twenty-six, twenty-seven, twenty-eight and twenty-nine, making it unlawful for any person to engage in work, labor or business on Sunday or to employ any person to engage in work, labor or business on Sunday, with certain exceptions and limitations; declaring that the exemption for works of necessity or charity shall not be deemed to include selling at retail or wholesale or by auction, or offering or attempting to sell on Sunday any of certain specifically named items of merchandise and personal property, and shall not be deemed to include the redemption of trading stamps; declaring that no contract shall be deemed void because it is made on Sunday; providing penalties for violations; declaring that each Sunday a person is engaged in work, labor or business or employs others to be so engaged, in violation of section twenty-five of said article, shall constitute a separate offense; giving justices of the peace concurrent jurisdiction with circuit and criminal courts of any such offense or offenses; providing for a local option election; and providing a separability clause.
Be it enacted by the Legislature of West Virginia:

That sections seventeen and eighteen, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article ten of said chapter be amended by adding thereto five new sections, designated sections twenty-five, twenty-six, twenty-seven, twenty-eight and twenty-nine, to read as follows:

Article 8. Crimes Against Chastity, Morality and Decency.

Section
25. Unlawful to engage in work, labor or business on Sunday.
26. Limitation of preceding section; contract made on Sunday valid.
27. Punishment for violation.
28. Local option election; form of petition therefor; election procedure; form of ballot; effect of such election.
29. Separability of provisions of article.

Section 25. Unlawful to Engage in Work, Labor or Business on Sunday.—On the first day of the week, commonly known and designated as Sunday, it shall be unlawful for any person to engage in work, labor or business, or to employ any person to engage in work, labor or business, except in household or other work of necessity or charity. Except as hereinafter provided the exemption for works of necessity or charity contained in the preceding sentence shall not be deemed to include selling at retail or wholesale or by auction, or offering or attempting to sell on Sunday any of the following: Jewelry; precious and semiprecious stones; silverware; watches; clocks; luggage; musical instruments; recordings; toys; clothing and wearing apparel; clothing accessories; footwear; textile yardgoods; housewares; china; kitchenware; home, business, office or outdoor furniture, furnishings and appliances; sporting goods (excluding sales or rental of bathing, boating and fishing paraphernalia and equipment, and sales or rental on the premises where sports, athletic games and events or recreational facilities are located or conducted of equipment essential to the normal use or operation of such premises for the purposes specified); pets, pet equipment or supplies; photographic supplies (excluding cameras, film and flash bulbs); hardware (excluding light bulbs, batteries and electrical fuses); tools; paints; building and lumber sup-
plies and materials; motor vehicles; and farm implements. Also, said exemption shall not be deemed to include the redemption of trading stamps. No inference shall arise from the foregoing enumeration of classes of personal property that sales or offers or attempts to sell other classes of personal property not mentioned are included within the above exemptions for works of necessity or charity.

Sec. 26. Limitation of Preceding Section; Contract Made on Sunday Valid.—It shall not be a violation of the preceding section of this article for any person to engage in any of the following activities on Sunday:

1. Transportation of the mail or any other activity in connection with the mail.

2. Transportation of persons or property by any present or future mode of public or private conveyance or other activity in connection with any such mode of public or private conveyance.

3. The operation of car washing establishments, garages and gasoline service stations, including the sale of commodities and services customarily furnished at such garages and service stations.

4. The operation of public utilities, manufacturing establishments, construction work, the production and processing of natural resources, or where there is an obligation to fulfill a provision in a contract wherein time is of the essence.

5. Operation of grocery stores, restaurants, taverns or other similar establishments engaged primarily in the sale of beverages or food products for human consumption.

6. An isolated transaction in which any tangible personal property is sold by the owner thereof, such sale not being made in the ordinary course of repeated and successive transactions of like character by such owner.

7. Professional and amateur sports, athletic contests and events, and concessions incidentally connected therewith.

8. Operation of recreational, amusement, scenic, his-
toric and educational facilities and activities in connection therewith.

(9) Advertising the sale of property or services.

(10) Unattended vending machines, vending personal property or services.

(11) The operation of antique shops and novelty and souvenir shops.

(12) The showing of real estate or mobile homes.

(13) The operation of a retail outlet for the exclusive sale of its products by an industry located in West Virginia.

(14) The sale of farm produce; the repair and operation of farm and orchard implements and equipment, and the spraying and dusting of farm crops by airplane.

(15) The sale of flowers or floral wreaths and arrangements.

(16) The sale at retail of hunting and fishing licenses and the sale of ammunition to persons possessing a valid hunting license.

(17) The sale of magazines, books, periodicals and newspapers.

(18) An isolated sale made to meet what the seller believes in good faith to be an unexpected emergency in which the health or property of some person is in jeopardy.

No contract shall be deemed void because it is made on Sunday.

Sec. 27. Punishment for Violation.—Any person violating the provisions of section twenty-five of this article shall, for the first offense, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five nor more than one hundred dollars. Any person violating the provisions of section twenty-five of this article shall, for the second offense occurring within one year of the first offense, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars and, in the discretion of the court, may be confined in jail for a period not exceeding thirty days. Any
person violating the provisions of section twenty-five of this article shall, for the third or any subsequent offense occurring within two years of the previous offense, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars and, in the discretion of the court, may be confined in jail for a period not exceeding six months.

Each Sunday a person is engaged in work, labor or business or employs others to be so engaged, in violation of section twenty-five of this article, shall constitute a separate offense.

Justices of the peace shall have concurrent jurisdiction with circuit and criminal courts of any such offense or offenses.

The penalties imposed by this section shall not be incurred by any person who conscientiously believes that Saturday ought to be observed as a Sabbath, and actually refrains from all secular business and labor on that day, provided he does not compel an apprentice or servant or employee, not of his belief, to do secular work or business on a Sunday.

Sec. 28. Local Option Election; Form of Petition

The county court of any county is hereby authorized to call a local option election for the purpose of determining the will of the voters as to whether the provisions of section twenty-five of this article shall continue in effect in said county.

A petition for such local option election shall be in the form hereinafter specified and shall be signed by qualified voters residing within said county equal to at least ten per cent of the persons qualified to vote within said county at the last general election. Said petition may be in any number of counterparts and shall be sufficient if substantially in the following form:

PETITION ON LOCAL OPTION ELECTION
RESPECTING WORK, LABOR OR BUSINESS
ON SUNDAY IN .................. COUNTY, WEST VIRGINIA

Each of the undersigned certifies that he or she is a
person residing in ................................ County, West Virginia, and is duly qualified to vote in said county under the laws of the state, and that his or her name, address and the date of signing this petition are correctly set forth below.

The undersigned petition said county court to call and hold a local option election upon the following question:

Shall the provisions of Section 25, Article 10, Chapter 61 of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, continue in effect in ................................ County, West Virginia?

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(Each person signing must specify either his postoffice address or his street number.)

Upon the filing of a petition for a local option election in accordance with the provisions of this section, the county court shall enter an order calling a local option election and providing that the same shall be held at the same time and as a part of the next primary or general election to be held in said county. Said county court shall give notice of such local option election by publication in two newspapers of opposite politics and of general circulation within said county. Said notice shall be given at least once each week for two successive weeks prior to the date of said election. If there is only one newspaper published in said county, publication of said notice therein shall be sufficient.

Each person qualified to vote in said county at said primary or general election shall likewise be qualified to vote at the local option election. The election officers appointed and qualified to serve as such at said primary or general election shall conduct said local option election in connection with and as a part of said primary or general election. The ballots in said local option election shall be counted and returns made by the election officers and the results certified by the commissioners of election to said county court which shall canvass the ballots, all in accordance with the laws of the state of West Virginia relating to primary and general elections insofar as the
same are applicable. The county court shall, without delay, canvass the ballots cast at said local option election and certify the result thereof.

The ballot to be used in said local option election shall have printed thereon substantially the following:

"Shall the Sunday Closing Law continue in effect in County of West Virginia?"

□ Yes □ No

(Place a cross mark in the square opposite your choice.)"

If a majority of the voters voting at any such local option election vote no on the foregoing question, the provisions of section twenty-five, article ten, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, shall no longer continue in effect in said county.

Sec. 29. Separability of Provisions of Article.—If section twenty-five, twenty-six, twenty-seven or twenty-eight of this article or any part of any one or more of said sections is declared unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this article or the article in its entirety.

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CHAPTER 13

(House Bill No. 20—By Mr. Speaker, Mr. Singleton, and Mr. Wilson)

(Passed January 31, 1964; in effect from passage. Approved by the Governor.)

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, designated article twenty-two, relating to the establishment of a state commission on higher education.

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, designated article twenty-two, to read as follows:

**Article 22. State Commission on Higher Education.**

**Section 1. Legislative Purposes.**—The purpose of the Legislature in the enactment of this article is to establish a state agency to be known as the state commission on higher education for public and nonpublic institutions of higher education, in order (a) to receive and disburse funds appropriated by the federal government for the construction, equipment and improvement of academic facilities of institutions of higher education as required by the federal Higher Education Facilities Act of 1963, and any and all subsequent acts of Congress relating to the same subject, and (b) to make continuing studies of the total program of higher education in West Virginia.

**Sec. 2. State Commission on Higher Education; Members; Qualifications.**—There is hereby created a commission to be known as the state commission on higher education which shall consist of nine members to be appointed by the governor as follows: Two members from the state board of education, two members from the board of governors of West Virginia university, two members from the boards of trustees of two nonpublic institutions of higher learning situate within the state, and three members to represent the public at large, which members may be officials, board members or trustees of any institutions of higher learning in this state, but shall be persons who have evidenced an interest in the field of higher education: Provided, That the two members appointed from the boards of trustees of two nonpublic institutions of higher learning and the three members to represent the public at large, shall be appointed by and with the advice and consent of the Senate. No more than two of the members representing the public shall belong to the same political party and no more than four members shall be graduates of the same university or college within the state of West Virginia. The governor shall
appoint a chairman selected from the representatives of
the public at large.

The members shall serve for a term of six years, except
that the original appointments shall be as follows: Three
members to serve two years, three members to serve four
years, and three members to serve six years: Provided,
however, That the eligibility of the members representing
the West Virginia board of education, the board of gov-
ernors of West Virginia university, and the boards of
trustees of the nonpublic institutions, to serve as a mem-
er of the state commission on higher education, shall
cease when their membership upon their respective
boards terminates. The governor shall appoint a member
to fill any vacancy, which member shall serve for the
unexpired term of the vacating member. All shall be
eligible for reappointment.

The members of the commission shall serve without
compensation, but shall be reimbursed for their neces-
sary expenses actually incurred in the performance of
their duties not to exceed twenty-five dollars per day
plus an allowance of ten cents per mile for every mile
actually traveled to and from such meetings.

Sec. 3. Powers and Duties of the State Commission on
Higher Education.—The state commission on higher edu-
cation shall have the power, (1) to apply for, receive and
administer, subject to any applicable regulations or laws
of the federal government or any agency thereof, any
federal grants, appropriations, allocations, and programs
for the development of academic facilities on behalf of
the state of West Virginia, or any institution of higher
education, public or private, within the state; (2) to de-
velop, alter, amend and submit to the federal gov-
ernment state plans for participation in federal grants,
appropriations, allocations and programs for the devel-
opment of academic facilities and to make regulations,
criteria, methods, forms, procedures, and to do all other
things which may be necessary to make possible the par-
ticipation of the state in such federal grants, appropria-
tions, allocations and programs for the development of
academic facilities; (3) to hold hearings, and render
decisions as to the priority assigned to any project, or as to any other matter or determination affecting any applicant for federal grants, appropriations, allocations and programs for the development of academic facilities; (4) to hire personnel, purchase materials, make studies and reports, enter into contracts, and do all other things necessary to accomplish the duties as set forth in this section within the limits of the funds available; (5) to adopt rules of procedure and to prescribe regulations for the submission to it of all matters within its jurisdiction; (6) to make a continuing study of the total program of higher education in the state, and from time to time make recommendations to the governing bodies of all institutions of higher education, in order to achieve the maximum and most effective utilization of the federal aid heretofore mentioned; and (7) to submit annually, to the governor, on or before the first Monday of December, a report of its proceedings during that year, together with such recommendations as the commission shall deem necessary.

Sec. 4. Meetings; Quorum.—A meeting of the commission shall be held within sixty days after the effective date of this article, in the state capitol, and thereafter the commission shall meet at least four times annually upon the call of the chairman. Five members of the commission shall constitute a quorum, and a majority vote of the quorum shall be necessary to pass upon matters before the commission.

CHAPTER 14

(House Bill No. 53—By Mr. Watson)

[Passed January 31, 1964; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to filing announcements of candidacies for the Legislature, and providing that announcements of candidacy for the Legis-
lature filed on or before February one, one thousand nine hundred sixty-four, shall be considered sufficient and valid in event that section one and section two, or either of them, of chapter one hundred fifty-eight of the acts of the Legislature of West Virginia, one thousand nine hundred sixty-three, are declared unconstitutional, and said Legislature be reapportioned prior to the one thousand nine hundred sixty-four primary election, providing for transfer of certificates of candidacy, and filing fees from circuit clerks to secretary of state, and for the arrangement of names of candidates for the offices of state senator and member of the House of Delegates, and the certification of candidates therefor by the secretary of state for the year one thousand nine hundred sixty-four.

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

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

**Article 5. Primary Elections and Nominating Procedures.**

**Section**

7. **Filing Announcements of Candidacies; Requirements.**

**Section 7. Filing Announcements of Candidacies; Requirements.**—Any person who is eligible to hold an office (including that of member of a state or county executive committee) shall file with the secretary of state, if it be an office to be filled by the voters of more than one county, or with the clerk of the circuit court, if it be for an office to be filled by the voters of a county or subdivision less than a county, a certificate declaring himself a candidate for the nomination for such office; which certificate shall be in form or effect as follows:

I, ____________, hereby certify that I am a candidate for the nomination for the office of ________________ to represent the ________________ party, and desire my name printed on the official ballot of said party to be voted at the primary election to be held on the __________ day of __________, 19_____; that I am a legally qualified voter of the county of ________________, State of West Virginia; that my residence is number __________ of ______________ street in the city (or town) of ______________ in ______________ county.
in said state; that I am eligible to hold the said office; that I am a member of and affiliated with said political party; that I am a candidate for said office in good faith.

Candidate

Signed and acknowledged before me this .......... day of

Signature and official title
of person before whom signed.

Such announcement shall be signed and acknowledged by the candidate before some officer qualified to administer oaths, who shall certify the same.

No person may be a candidate for nomination for office in any political party unless it be openly known that such person is a bona fide member of such party.

Such certificate shall be filed with the secretary of state or the clerk of the circuit court, as the case may be, not earlier than the first Monday in January next preceding the primary election day, and not later than the first Saturday of February next preceding the primary election day, and must be received before midnight, eastern standard time, of that day or, if mailed, shall be postmarked before that hour: Provided, That during the calendar year of one thousand nine hundred sixty-four, in event (a) that section one and section two, or either of them (in whole or in part), of article two of chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, said article two having been enacted by chapter one hundred fifty-eight of the acts of the Legislature of West Virginia, for the year one thousand nine hundred sixty-three, regular session, relating to the apportionment of membership in the Legislature, are declared unconstitutional by the supreme court of appeals of West Virginia, and (b) that thereafter the Legislature enacts legislation reapportioning said Legislature prior to the primary election for the year one thousand nine hundred sixty-four, the announcements of candidacies for membership in the state Senate and membership in the House of Delegates which were properly filed on or before February one, one thousand

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nine hundred sixty-four, by any persons under the provisions of this section, shall be considered valid and sufficient announcements of candidacies for such offices in the counties or districts wherein such candidates reside at the time said certificates of candidacies were filed for membership in the Legislature representing the particular counties, delegate districts or senatorial districts for which filed, as the case may be, or which are created in such apportionment legislation as may hereafter be adopted during the year one thousand nine hundred sixty-four, prior to the primary election: Provided, however, That in event such apportionment legislation is hereafter adopted during the year one thousand nine hundred sixty-four prior to the primary election wherein delegate districts are established, the circuit clerks of all counties within such established delegate districts shall immediately transfer all certificates of candidacy for membership in the House of Delegates, together with the filing fees therefor, to the secretary of state: Provided further, That notwithstanding the provisions of section nine, article five of this chapter and any other provision of this chapter requiring an earlier date or time, the secretary of state shall arrange the names of all candidates who have filed announcements with him and who are entitled to have their names printed on any political party ballot for the offices of state senator and member of the House of Delegates and shall certify the same to the several clerks of the circuit courts prior to the week next following the second Saturday in the month of March, in the year one thousand nine hundred sixty-four.

CHAPTER 15

(House Bill No. 50—Originating in the House Committee on the Judiciary)

[Passed February 5, 1964; in effect ninety days from passage. Approved by the Governor.]

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, designated article twenty-five, relating to the organization and operation of voluntary, nonprofit, consumer sponsored, direct service health care organizations, and to their licensing and regulation by the state.

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, designated article twenty-five, to read as follows:


Section 1. Declaration of policy.
2. Definitions.
3. Incorporation; purposes; name; limitations.
4. Board of directors.
5. Exemptions.
6. Supervision and regulation by insurance commissioner.
7. Licenses.
8. Supervision by commissioner; approval of contracts, forms, rates and fees.
9. Reports by corporations to the commissioner.
10. Examination of corporation; access to books, records, etc.
12. Required provisions in contracts made by the corporation with physicians, dentists, etc., hospitals and other health agencies.
13. Contracts to be furnished to subscribers; contracts with needy persons.
14. Advancement of sums of money to a corporation.
15. Investments.
16. Disposition of fees and charges.
17. Bonds of corporation officers and employees.

Section 1. Declaration of Policy.—In view of the desirability of making available to the people of this state various methods of procuring and financing increased hospital, medical, dental, other health services, or any one or more of them, the declared policy of the Legislature in the enactment of this article is to encourage the organization, promotion and expansion of health care corporations by exempting them from the payment of all taxes and from the operation of the general insurance laws of this state, but at the same time subjecting them to such regulation as may be necessary for the adequate protection of those members of the public who subscribe for the services offered by such corporations.
Sec. 2. Definitions.—For the purpose of this article, unless the context otherwise indicates:

(a) “Health care corporation or corporation” shall mean a corporation organized and licensed under the provisions of this article.

(b) Direct health care services shall, subject to the limitations contained in this article, include all such services as are designed to preserve or restore a person’s health.

(c) “Subscriber” shall mean a person (including, as the case may be, the members of his family) who subscribes to the direct health care plan of a corporation.

(d) “Commissioner” means the insurance commissioner of the state of West Virginia.

Sec. 3. Incorporation; Purposes; Name; Limitations.—Any law to the contrary notwithstanding, nonprofit, non-stock corporations may be organized in accordance with the provisions of article one, chapter thirty-one of the code of West Virginia, for the sole purpose of providing any or all of the following direct health care services, at the expense of the corporation, to its members and subscribers through contracts with duly licensed physicians and surgeons, osteopathic physicians and surgeons, chiropractors, chiropodists, nurses, dentists, optometrists and pharmacists, and any others who are licensed to engage in the practice of the healing arts, as well as hospitals, clinics, convalescent centers, nursing homes, and any other persons, corporations, associations, and institutions engaged in the business of providing facilities, appliances, supplies and services incidental to such health care.

No such corporation shall include in its name the words “insurance,” “casualty,” “surety,” “health and accident,” “accident and sickness,” “mutual,” or any other words, which in the opinion of the commissioner are descriptive of the insurance, casualty or surety business, or deceptively similar to the name or description of any insurance or surety corporation doing business in the state.

A corporation shall provide only direct health care services to the subscribers to its health care plan and
shall not provide for the payment of any cash or cash indemnity to or on behalf of a subscriber: Provided, That a corporation may provide a cash reimbursement to a subscriber who employs or obtains in the event of an emergency the health care services of any person, corporation, association or institution named or referred to in this section and located outside the territorial boundaries within which the corporation is licensed to operate.

Sec. 4. Board of Directors.—The board of directors of any corporation organized under this article shall consist of seven members, all of whom shall be residents of the state of West Virginia, four of whom shall be subscribers to its services, one of whom shall be a person licensed to practice medicine under the laws of the state of West Virginia, one of whom shall be a person connected with the healing arts, and one of whom shall be a member of the general public not connected with any contracting party. The members of the board shall serve without compensation but may be reimbursed for expenses incurred in carrying out their duties as members of the board.

Sec. 5. Exemptions.—Every such corporation is hereby declared to be a charitable, scientific, nonprofit institution and as such exempt from the payment of all property and other taxes.

Sec. 6. Supervision and Regulation by Insurance Commissioner.—Corporations organized under this article shall be subject to supervision and regulation by the insurance commissioner. Any provisions of this chapter or of any other law to the contrary notwithstanding, such corporation shall not be subject to the insurance laws of this state now in force nor to any law hereafter enacted relating to insurance and corporations engaged in the business of insurance unless otherwise provided in this article or unless such other law specifically and in exact terms applies to such voluntary, nonprofit health care corporations as are organized under this article.

Sec. 7. Licenses.—(a) Before it may issue any contract to a subscriber, a corporation desiring to establish,
maintain, and operate a direct health care plan must first obtain from the commissioner a license as provided in this section.

(b) Applications for an original license shall be made on forms prescribed and furnished by the commissioner and shall be accompanied by the following documents and information: (1) Certificate of incorporation; (2) by-laws; (3) list of names and residence addresses of all officers and board of directors of the corporation; (4) contracts between the corporation and persons, firms, corporations or associations to render direct health care services; (5) proposed contracts to be issued to subscribers setting forth in detail the direct health care services to which subscribers are entitled and the table of rates to be charged for such services; (6) financial statement showing the assets and liabilities of the corporation, the amount of contributions paid, or agreed to be paid, to the corporation for working capital, the names or name of each contributor and the terms of each contribution; and (7) such additional information as the commissioner may require.

(c) Within thirty days after receipt of an application, the commissioner shall, upon payment to him of a license fee of one hundred dollars, issue a license authorizing the corporation to transact business in this state in the area to be served by it, if he is satisfied (1) that the applicant is incorporated in this state under the provisions of article one, chapter thirty-one of the code of West Virginia as a bona fide, nonprofit corporation, (2) that the health care plan which the corporation proposes to operate, as well as the forms of all contracts which it proposes to issue under such health care plan, are based upon sound business principles and will be in every respect equitable, just and fair to the subscriber, (3) that the working capital available to the corporation will be sufficient to pay all operating expenses during the subscription period, and (4) that the proposed plan will adequately serve the best interests of all the people of the area in which the corporation intends to operate, regardless of their race, color or religion.
(d) The commissioner may refuse to license a corporation when he determines that such corporation has not complied with the laws of this state, or that it is not in the best interest of the people of the state that such corporation be licensed, or that such corporation would transact business in this state in an improper, illegal, or unjust manner. In such event, the commissioner shall enter an order refusing such license and the applicant therefor may have a hearing and judicial review in accordance with the applicable provisions of article two of this chapter relating to hearings before and judicial review of orders entered by the commissioner.

(e) All licenses issued under the provisions of this article shall expire at midnight on March thirty-first next following the date of issuance. The commissioner shall renew annually the license of all corporations which qualify and make application therefor upon a form prescribed by the commissioner upon payment to the commissioner of a renewal fee of one hundred dollars.

(f) The commissioner shall, after notice and hearing, refuse to renew or shall revoke or suspend the license of a corporation, if the corporation: (1) Violates any provision of this article; (2) fails to comply with any lawful rule, regulation or order of the commissioner; (3) is transacting its business in an illegal, improper or unjust manner, or is operating in contravention of its articles of incorporation or any amendments thereto, of its by-laws, or of its health care plan; (4) is found by the commissioner to be in an unsound condition or in such condition as to jeopardize its obligations to subscribers and those with whom it has contracted; (5) compels subscribers to its health care program to accept less than the obligation due them under their contracts or agreements with the corporation; (6) refuses to be examined or to produce its accounts, records and files for examination by the commissioner when required; (7) fails to pay any final judgment rendered against it in West Virginia within thirty days after the judgment became final or time for appeal expired, whichever is later; (8) fails to pay when due to the state of West Virginia any fees, charges, or penalties required by this chapter.
In those cases where the commissioner has the right
to revoke, suspend or terminate the license or any renewal
thereof of said corporation, the commissioner shall, by
order, require the corporation to pay to the state of West
Virginia a penalty in the sum not exceeding one thousand
dollars, and on the failure of the corporation to pay such
penalty within thirty days after notice thereof, the com-
missioner shall revoke or suspend the license of such cor-
poration.

When any license has been revoked, suspended or ter-
minated, the commissioner may reinstate such license
when he is satisfied that the conditions causing such revo-
cation, suspension or termination have ceased to exist and
are unlikely to recur.

In the event the commissioner revokes, suspends or
terminates a license, the corporation may demand a hear-
ing in the manner provided in article two of this chapter.

Sec. 8. Supervision by Commissioner; Approval of
Contracts, Forms, Rates and Fees.—(a) It shall be the
duty of the commissioner to enforce the provisions of
this article.

(b) No such corporation shall deliver or issue for
delivery any subscriber's contract, changes in the terms
of such contract, application, rider or endorsement until
a copy thereof and the rates pertaining thereto have
been filed with and approved by the commissioner. All
such forms filed with the commissioner shall be deemed
approved after the expiration of thirty days from the
date of such filing unless the commissioner shall have
disapproved the same, stating his reasons for such dis-
approval in writing, except that such period may be ex-
tended for an additional period not to exceed fifteen days
upon written notice thereof from the commissioner to
the applicant. Such forms may be used prior to the ex-
piration of such periods if written approval thereof has
been received from the commissioner.

(c) No rates to be charged subscribers shall be used
or established by any such corporation unless and until
the same have been filed with the commissioner and ap-
proved by him. The procedure for such filing and ap-
proval shall be the same as that prescribed in paragraph (b) of this section for the approval of forms. The commissioner shall approve all such rates which are not excessive, inadequate, or unfairly discriminatory.

(d) The commissioner shall pass upon the actuarial soundness of all direct health care services plans.

(e) The corporation shall accumulate a fund to be derived from a minimum of two per cent of every subscriber's monthly premium which shall be known as a contingency and liability reserve fund except that the same shall not exceed an amount equal to three months' average obligation of said corporation, nor shall it fall below a minimum of one month's average obligation of said corporation. Said fund shall be expended by the corporation according to rules and regulations to be promulgated by the commissioner.

In addition to the above requirements, every subscriber shall pay into the corporation a membership fee equal to one monthly premium. The membership fee shall be collected in full by said corporation within ninety days of said subscriber's application for membership.

 Sec. 9. Reports by Corporations to the Commissioner.—Every corporation shall annually on or before the first day of March, file, with its application for renewal license, a report, verified by an officer of the corporation, with the commissioner, showing its condition on the last day of the preceding calendar year, on forms prescribed by the commissioner, which report shall include:

(a) A financial statement of such corporation, including its balance sheet and its receipts and disbursements for the preceding calendar year;

(b) A list of the names and residence addresses of all its officers and directors, and the total amount of expense reimbursement to all officers and directors during the preceding calendar year;

(c) The number of subscribers' contracts issued by such corporation and outstanding;

(d) The names of those persons (other than subscribers), corporations, associations, and institutions with which such corporation has agreements;
Sec. 10. Examination of Corporation; Access to Books; Records, etc.—(a) The commissioner or his accredited examiners may at any reasonable time and shall, at least once each year, visit each health care corporation and thoroughly examine its financial condition and methods of doing business and ascertain whether it has complied with all of the laws and regulations of this state. All expenses of each such examination conducted shall be borne by such corporation. The commissioner shall make a full written report of each such examination of the corporation, certified to by the commissioner or the examiner in charge of such examinations. The commissioner shall furnish a copy of the report to the corporation examined not less than ten days prior to filing the same in his office. If such corporation so requests in writing, within such ten-day period, the commissioner shall consider the objections of such corporation to the report as proposed, and shall not so file the report until after such modifications, if any, have been made therein as the commissioner deems proper. The report, when filed, shall be admissible in evidence in any action or proceeding brought by the commissioner against the corporation examined, or its officers or agents, and shall be prima facie evidence of the facts stated therein. The commissioner or his examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, whether or not a written report of the examination has at that time been either made, served or filed in the commissioner’s office.

(b) For such purposes the commissioner, his deputies and employees shall have free access to all books, records, papers, documents and correspondence of any such corporation and such books, records, papers, documents and records shall be and remain in the state of West Virginia. The licenses of said corporation shall be automatically revoked if such books, records, papers, documents and records are taken outside the state of West Virginia without the prior written approval of the commissioner.
(c) The commissioner shall revoke the license of any such corporation which refuses to submit to such examination.

Sec. 11. Rules and Regulations.—The commissioner is authorized to promulgate and adopt such rules and regulations relating to health care corporations as are necessary to discharge his duties and exercise his powers and to effectuate the provisions of this article and to protect and safeguard the interests of subscribers and the public of this state.

Sec. 12. Required Provisions in Contracts Made by the Corporation with Physicians, Dentists, etc., Hospitals and Other Health Agencies.—Each contract made by the corporation with any person (other than subscribers), corporation, association and institution, named or referred to in section three of this article shall contain the following provisions:

(a) That the person, corporation, association or institution will render to any subscriber such service as he may be entitled to under the terms and conditions of the contract issued to the subscriber by the corporation;

(b) That the person, corporation, association or institution will accept as full payment for services contracted for subscribers such compensation as is set forth in the contract between such persons, corporation, association or institution and the corporation;

(c) That in the event a surplus remains after an annual accounting of the financial condition of the corporation, such surplus may be used by the corporation, upon an affirmative vote of a majority of its board of directors for the following purposes, in the order of priority stated below:

(1) To liquidate on a pro rata basis any obligation due any such person, corporation, association or institution in previous years;

(2) To return the original contributions for working capital, or any part thereof, on a pro rata basis;

(3) To reduce rates charged subscribers, or to expand the services rendered them.
Sec. 13. Contracts to Be Furnished to Subscribers; Contracts with Needy Persons.—(a) Every such corporation shall deliver to each subscriber to its health care plan a copy of the contract.

(b) A corporation may not accept from private agencies, corporations, associations, groups or individuals, payment for or on behalf of any subscriber of all or any part of the cost of subscriptions for direct health care services to be rendered: Provided, however, That no employer or sponsor may deduct the proportionate share of such payment attributable to any employee or subscriber from that employee's or subscriber's wages or salary, without the prior written consent of the employee or subscriber. It shall be unlawful for any governmental agency to pay subscriptions for or on behalf of any subscriber.

Sec. 14. Advancement of Sums of Money to a Corporation.—Any person may advance to such corporation any sums of money necessary for its business or to enable it to comply with any requirements of law. Such advances and such interest thereon not exceeding six per cent per annum, as may be agreed upon, shall not be a liability or a claim against the corporation or any of its assets, except as provided in this section and shall be reimbursed only out of the surplus earnings of such corporation. This section does not affect the power to borrow money which any such corporation possesses under other laws. No commissions or promotion expenses shall be paid by the corporation in connection with the advance of any such money to the corporation. The amount of any such advance that has not been repaid shall be reported in each annual statement of the corporation.

Sec. 15. Investments.—The funds of any such corporation shall be invested only in the following: Corporate obligations of West Virginia corporations, building and savings and loan shares of West Virginia corporations and state or national bank shares, deposits or certificates of banks located in West Virginia, preferred or guaranteed stock of any West Virginia corporation, real property located in West Virginia, and revenue bonds and government securities of any state or the United States.
Sec. 16. Disposition of Fees and Charges.—All licenses or renewal fees, all auditing charges and any other income derived from this article shall be deposited with the treasurer of the state of West Virginia to the credit of the insurance commissioner to be used only for the cost of operation of the insurance commissioner’s office.

Sec. 17. Bonds of Corporation Officers and Employees.—Every officer or employee of any such corporation, who is entrusted with the handling of its funds, shall furnish, in such amount as may with the approval of the commissioner be fixed by the board of directors of the corporation, a bond with corporate surety, conditioned upon faithful performance of all his duties.

CHAPTER 16

(Senate Bill No. 22—By Mr. Carson, Mr. President, and Mr. Jackson)

|Passed February 6, 1964; in effect July 1, 1964. Approved by the Governor.|

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eight, relating to the establishment, powers and administration of a state commission on manpower, technology and training.

Be it enacted by the Legislature of West Virginia:

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

Article 8. West Virginia Commission on Manpower, Technology and Training.

Section
1. Declaration of legislative policy and intent.
2. Commission created; members.
3. Terms of office; vacancies.
4. Expenses of members.
Section 1. Declaration of Legislative Policy and Intent.

The Legislature hereby finds and declares that experience has shown that automation and other forms of rapid technological change can cause industrial and governmental displacement and unemployment which seriously depress the morale and productive capacity of the work force of the state; that many of those displaced or not hired because of such developments find that there is no longer a market, or a very limited market, for their skills; that such developments generate demands for new and different skills and capabilities from those possessed by the work force; that current and prospective manpower surpluses and shortages generated by rapid technological change should be identified and appropriate steps be taken to plan for their amelioration; that advance knowledge of impending changes in work processes and their consequent manpower requirements should be secured as a basis for the planning of corrective measures; that the effectiveness of public and private training and educational resources should be reappraised continuously to evaluate their capacity to produce the skills needed in a changing technology; that the steps being taken by labor and management to adjust to these changes should be identified and made known; and that it is in the interest of the state of West Virginia that such appraisals of the impact of automation and technological development on the skills required in the work force and the job opportunities available to them be made and continuously reappraised, and that the information and knowledge so gained be made available to labor, employers and public agencies as a basis for the planning of programs and actions to develop the skills of our work force for a changing technology, to deal more effectively with the problems of unemployment and to further the economic growth
and development of the state and the well-being of its people.

Sec. 2. Commission Created; Members.—The West Virginia commission on manpower, technology and training is hereby created. The commission shall consist of fifteen members to be appointed by the governor by and with the advice and consent of the senate and seven ex officio members. The governor shall appoint five members who represent the employer interest of the state, five members who represent labor organizations, and five members who represent the general public. The ex officio members shall be the commissioners of the state departments of agriculture, commerce, employment security, labor and welfare, and the state directors of the division of vocational education and the division of vocational rehabilitation.

Sec. 3. Terms of Office; Vacancies.—Each member of the commission appointed by the governor shall hold office for a term of six years, subject to the will and pleasure of the governor, and until the appointment and qualification of his successor: Provided, That the initial appointments shall be made as follows: The governor shall appoint five members for a term of two years, five members for a term of four years, and five members for a term of six years. Ex officio members shall serve for terms concurrent with the term of each one's principal office. The term of each employer representative, labor organization representative, and of each general public representative, shall cease whenever such individual member is no longer a representative of the group for which appointment to such term was made. Vacancies in the terms of members appointed by the governor shall be filled for the unexpired term.

Sec. 4. Expenses of Members.—Each member of the commission shall receive necessary expenses actually incurred in the performance of official duties under the provisions of this article. Requisition for expenses shall be accompanied by a sworn and itemized statement which shall be filed with the auditor.

Sec. 5. Chairman; Meetings.—The governor shall desig-
nate one of the members of the commission as the chairman of the commission. A majority of the members of the commission shall constitute a quorum for the transaction of business. The commission shall meet at least twice a year; other meetings may be held upon the call of the chairman or of a majority of its members.

Sec. 6. Executive Secretary; Personnel; Salary and Expenses.—The commission is hereby authorized to employ an executive secretary and such other personnel as in its judgment may be necessary in carrying out the work of the commission, and is further authorized to fix the salaries for such employees and incur other expenses necessary to the effective discharge of its powers and duties within the limits of funds available.

The commission may utilize personnel of the departments, agencies and boards of the state whenever such utilization is consistent with the laws, rules and regulations under which such departments, agencies and boards operate.

The commission may utilize personnel of the government of the United States to the extent permissible by law.

Sec. 7. Recommendations to Departments; Information to Be Furnished by Departments.—The commission may make recommendations to any department, board, agency or officer of the state government for the purpose of implementing the findings of the commission. Every department, board, agency and officer of the state government shall cooperate with the commission for the achievement of the purposes of this article.

Sec. 8. Studies by Other Departments.—The state departments of employment security, commerce, labor and education shall cooperate with the commission in conducting studies, in making surveys and in performing similar activities whenever such is authorized under the laws, rules and regulations under which said departments operate.

Sec. 9. Commission Duties and Functions.—The commission shall:
(a) Study the introduction of modern production and distribution techniques in West Virginia to determine the impact of automated processes and other technological advancements on employment opportunities; the skill requirements of industry, business and governments; the displacement of employees, and the obsolescence of skills among members of the labor force.

(b) Study and analyze the processes of adjustment to automation and other technological advancements in the state's economy.

(c) Study and analyze surveys of current public and private programs in the field of job training, retraining, and skill developments generally to evaluate their effectiveness in providing employable skills in reference to both the changing composition of the state's labor force and the changing skill requirements of industry.

(d) Recommend coordinated surveys in the various labor markets of the state to project as best possible the basic skill requirements of industry, business and government sufficiently in advance of need, and in the approximate quantity needed, to the end that such projections shall provide a body of usable information for the development of functional job training, retraining, and skill development programs by labor and management and responsible government agencies. Such surveys shall consider, but shall not necessarily be limited to the consideration of, the skills presently available to industry, business and government, the present skill requirements of industry and the future skill requirements of industry.

(e) Encourage labor and management to undertake jointly similar surveys and projections within their respective industries and occupations to maintain a high level of private initiative in meeting the skill development requirements of both employees and employers.

(f) The commission shall cooperate with and assist the national manpower advisory committee as established by the United States Manpower Development and Training Act of 1962. The commission shall assist the appropriate agencies to establish in each training area within the state, representative advisory committees on manpower.
Sec. 10. Authority to Accept Grants.—The commission may accept grants of funds from the government of the United States, from any department or agency of the state of West Virginia, or from any person or private agency permitted by law to make such grants.

Sec. 11. Records, Public; Confidential Information.—The information received from any group, firm or individual in response to the commission's request shall be for the confidential information of the commission insofar as it relates to planning, manning, personnel, union membership and related matters. Otherwise, and except as provided by law, the records of the commission shall be open to inspection by the public during regular office hours.

Sec. 12. Contracts or Agreements by the Commission.—The commission may enter into agreements and contracts with the United States or any agency thereof, or with any state or agency thereof, or any private organization or individual engaged in functions comparable to those performed by the commission for the exchange of information, studies and surveys, or may conduct surveys.

Sec. 13. Annual Report to Governor and Legislature.—The commission shall submit annually to the governor and the Legislature its findings and recommendations not later than December thirty-first of each calendar year.

CHAPTER 17
(Com. Sub. for Senate Bill No. 10—Originating in the Senate Committee on Natural Resources)

[Passed February 5, 1964; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article two-a, chapter twenty-two of said code;
and to further amend article two-a, chapter twenty-two of said code, by adding thereto two new sections, designated sections five-a and five-b, relating to the definition of "surface mining" as that term is used in said article six relating to reclamation and in said article two-a relating to surface mining; relieving individuals, firms, etc., from reclamation requirements respecting a limestone, sand or sandstone quarry; excluding acreages encompassed by a quarry and by preparation and processing plants, offices, laboratories or other buildings incidental to the operation of a quarry in the computation of the amount of the performance bond required by section five of said article two-a; providing that the amount of the bond for the recovery of limestone, sand or sandstone shall not be subject to any minimum requirements; and defining "quarry" as that term is used in said section five-a; and excepting individuals, various concerns and operators from reclamation requirements respecting removal of earth or stone recovered for borrow and fill material for grading in federal and state highway construction projects.

Be it enacted by the Legislature of West Virginia:

That section three, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two, article two-a, chapter twenty-two of said code be amended and reenacted; and that article two-a, chapter twenty-two of said code be amended by adding thereto two new sections, designated sections five-a and five-b, all to read as follows:

Chapter
20. NATURAL RESOURCES.
22. MINES AND MINERALS.

CHAPTER 20. NATURAL RESOURCES.

Article 6. Reclamation.

Section
3. Definitions.

Section 3. Definitions.—For the purpose of this article, the term "surface mining" shall include all industrial activity for the recovery of minerals except those activities subject to the provisions of articles one, two, four,
For the purpose of this article, a “surface mine” shall include all areas surface mined or being surface mined as well as adjacent areas ancillary to the operation, together with preparation and processing plants, storage areas and haulageways: Provided, That such areas are sufficiently concentrated that they can be adequately supervised by one foreman: And provided further, That mines subject to the provisions of articles one, two, four, five and seven of chapter twenty-two of the code of West Virginia, as amended, are not “surface mines” within this definition.

For the purpose of this article, “disturbed land” shall include the area from which the overburden has been removed in surface mining operations, plus the area covered by the spoil, and any areas used in surface mining operations which by virtue of their use are susceptible to excessive erosion.

For the purpose of this article, “operator” shall mean any individual, a corporation, a partnership, an association or a trust which is granted a permit to engage in any activity covered by this article.

CHAPTER 22. MINES AND MINERALS.
West Virginia, one thousand nine hundred thirty-one, as amended, and, subject to such exception, shall include plant and equipment used in processing said minerals.

For the purpose of this article, a "surface mine" shall include all areas surface mined or being surface mined, as well as adjacent areas ancillary to the operation, together with preparation and processing plants, storage areas and haulageways: Provided, That such areas are sufficiently concentrated that they can be adequately supervised by one foreman: And provided further, That mines subject to the provisions of articles one, two, four, five and seven of chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, are not "surface mines" within this definition.

For the purpose of this article, "disturbed land" shall include the area from which the overburden has been removed in surface mining operations, plus the area covered by the spoil, plus any areas used in surface mining operations which by virtue of their use are susceptible to excessive erosion.

For the purpose of this article, "operator" shall mean any individual, a corporation, a partnership, an association or a trust which is granted a permit to engage in any activity covered by this article.

Sec. 5-a. Excepting Persons, Firms, etc., from Reclamation Requirements Respecting a Quarry; Computation of the Amount of Performance Bonds Required by Article; Definition of Quarry.—Any provision of this article or of article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary notwithstanding, (1) an individual, firm, partnership, association, trust, corporation or operator (a) shall not be subject to any duty or requirement whatever with respect to the reclamation of a quarry and (b) shall not be required to include acreages encompassed by a quarry and by preparation and processing plants, offices, laboratories or other buildings incidental to the operation of a quarry in the computation of the amount of the bond required by section five of this article; and (2) the amount of the bond for the recovery of limestone, sand
or sandstone shall not be subject to any minimum require-
ments of section five of this article. For the purpose of
this section, "quarry" shall mean the empty space or
crater from which limestone, sand or sandstone has been
removed or will be removed in the next ensuing one and
one-half years, which space or crater shall include the
floor or pavement and vertical walls but shall not include
adjacent disturbed overburdened areas.

Sec. 5-b. Excepting Persons, Firms, etc., from Reclama-
tion Requirements Respecting the Removal of Earth or
Stone Recovered for Borrow and Fill Material for Grad-
ing in Federal and State Highway Construction Projects.
—Any provision of this article or of article six, chapter
twenty of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, to the contrary notwith-
standing, an individual, firm, partnership, association,
trust, corporation or operator shall not be subject to any
duty or requirement whatever with respect to reclama-
tion requirements when engaged in the removal for bor-
row and fill material for grading in federal and state high-
way construction projects: Provided, That the provisions
of the highway construction contract requires the fur-
nishing of a suitable bond which provides for reclamation
wherever practicable of the areas affected by such recov-
ery activity.

CHAPTER 18

(House Bill No. 54—By Mr. Holliday and Miss Crandall)

[Passed February 5, 1964; in effect from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter seventeen-c of the
code of West Virginia, one thousand nine hundred thirty-
one, as amended, by adding thereto a new section, design-
nated section forty-three, relating to equipment on auto-
mobiles.
Be it enacted by the Legislature of West Virginia:

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

**Article 15. Equipment.**

Section 43. Vehicles to be equipped with safety belts.

Section 43. Vehicles to Be Equipped with Safety Belts.—No dealer in new or used automobiles shall sell, lease, transfer or trade, at retail, any passenger automobile which is manufactured after January one, one thousand nine hundred sixty-five, unless such vehicle is equipped with safety seat belts for the front seat, which seat belts shall meet the standards set and approved by the Society of Automotive Engineers, Inc.

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**CHAPTER 19**

(Com. Sub. for House Bill No. 38—Originating in the House Committee on the Judiciary)

[Passed February 5, 1964; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten-j, article four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to ordinance procedures of municipal corporations.

Be it enacted by the Legislature of West Virginia:

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

**Article 4. Powers, Duties and Allied Relations of Municipal Corporations, Councils or Officers.**

Section 10-j. Adoption of ordinances; notice and procedure.

Section 10-j. Adoption of Ordinances; Notice and Procedure.—Except as hereinafter provided in this section,
and notwithstanding the provisions of any existing municipal charter, it shall not be necessary for the governing body of a city to publish a proposed ordinance in a newspaper prior to adoption thereof. In case of a proposed ordinance to codify, reenact or enact a comprehensive code of ordinances, or in case of a proposed ordinance having as its principal object the raising of revenue for the city, said governing body shall, at least five days before the meeting at which said ordinance is to be finally adopted, cause notice of the proposed adoption to be published in at least one newspaper of general circulation in said city, stating therein the general title or titles of said ordinance, the time and place of the proposed final adoption, and the place or places where, within the city, the entire ordinance will be available for public inspection; a reasonable number of copies of the proposed ordinance shall be kept at such place and be made available for public inspection.

CHAPTER 20

(House Bill No. 2—By Mr. Myles and Mr. England)

[Passed February 5, 1964; in effect July 1, 1964. Approved by the Governor.]

AN ACT to repeal article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article five; to amend and reenact sections two and three, article nine, chapter sixteen of said code; to amend and reenact section seven, article one, and section four, article seven of chapter twenty of said code; and to further amend said chapter twenty by adding thereto a new article, designated article five-a; said new article five of said chapter twenty relating generally to water resources and the regulation and control thereof and providing criminal offenses and penalties; said sections two and three, article nine of said chapter sixteen relating to the throwing or placing of dead animals, or parts thereof, putrid, nauseous or offensive
substances hazardous to public health, garbage, slop, spoiled meat, or the contents of privy vaults, septic tanks or cesspools in or near certain waters or on or near certain public places, or the permitting of the same so to remain and providing criminal offenses and penalties; said section seven, article one of said chapter twenty relating to additional powers, duties, services and responsibilities of the director of the department of natural resources; said section four, article seven of said chapter twenty relating to the powers and duties of conservation officers; and said new article five-a of said chapter twenty relating to the rights, obligations and procedures pertaining to water pollution control, providing for the adoption of a water pollution control act and providing civil and criminal offenses and penalties.

Be it enacted by the Legislature of West Virginia:

That article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and a new article five enacted in lieu thereof; that sections two and three, article nine, chapter sixteen of said code be amended and reenacted; and that section seven, article one, and section four, article seven of chapter twenty of said code be amended and reenacted; and that chapter twenty of said code be further amended by adding thereto a new article, designated article five-a, all to read as follows:

Chapter
16. Public Health
20. Natural Resources

CHAPTER 16. PUBLIC HEALTH.

Article 9. Offenses Generally.

Section 2. Throwing dead animals or offensive substances into waters used for domestic purposes; penalty; jurisdiction of justices.

3. Depositing dead animals or offensive substances in or near waters or on or near roads or on public grounds; penalties; failure to bury or destroy offensive substances after conviction; successive offenses; jurisdiction of justices.

Section 2. Throwing Dead Animals or Offensive Substances into Waters Used for Domestic Purposes; Penalty; Jurisdiction of Justices.—Any person who knowingly and wilfully shall throw, or cause to be thrown, any dead
animal, carcass or part thereof, or any putrid, nauseous
or offensive substances, hazardous to public health, into
any well, cistern, spring, brook or branch of running
water, which is used for domestic purposes, shall be guilty
of a misdemeanor, and, upon conviction thereof, shall be
punished by a fine of not less than twenty dollars nor
more than five hundred dollars, or by imprisonment in
the county jail for a period not to exceed six months, or,
in the discretion of the court, by both such fine and im-
prisonment, and, moreover, shall be liable to the party
injured in a civil action for damages.

Justices of the peace shall have concurrent jurisdiction
with the circuit, criminal and intermediate courts of the
state for the enforcement of the criminal penalties of this
section.

Sec. 3. Depositing Dead Animals or Offensive Sub-
stances in or near Waters or on or near Roads or on Pub-
lic Grounds; Penalties; Failure to Bury or Destroy Offen-
seive Substances after Conviction; Successive Offenses;
Jurisdiction of Justices.—Any person who shall place,
cast, discharge, or deposit the carcass of any dead animal,
or part thereof, or garbage, or slop, or spoiled meat,
or putrid organic substances hazardous to public health,
or the contents of privy vaults, or septic tanks, or cess-
pools, into any river, creek or other stream, or upon
the surface of any land adjacent to such river, creek
or other stream in such a location that high water or
normal drainage conditions will cause such offensive ma-
terial to be washed, drained or cast into the river, creek
or other stream; or any person who shall place, cast, dis-
charge, or deposit such offensive material upon the sur-
face of any public road, street, alley, city or town lot, pub-
lic ground, market space, or common, or upon the surface
of any land within one hundred yards of a public street or
road; or any person, who, being the owner, lessee or occu-
pant of any such city or town lot, public ground, market
space, common, or land within one hundred yards of a
public street or road, shall knowingly permit any of the
offensive materials hereinbefore named to remain thereon,
to the annoyance of any of the citizens of this state, or
shall neglect or refuse to remove or abate the nuisance oc-
casioned thereby, within twenty-four hours after such
person has knowledge of the existence of such nuisance
upon any of the above-described premises owned, leased,
or occupied by him, or within twenty-four hours of serv-
ice of notice thereof in writing from the health officer
of the county, or the mayor or health officer of the mu-
unicipal corporation, as the case may be, in which any
such nuisance exists, shall be guilty of a misdemeanor,
and, upon conviction thereof, shall be punished by a
fine of not less than twenty dollars nor more than five
hundred dollars.

Upon a conviction for any such offense, the person
convicted shall, within twenty-four hours after such
conviction, bury or cause to be buried at least three feet
under the ground, or destroy or cause to be destroyed
by fire or as otherwise directed by the health officer
within whose jurisdiction the offense may have occurred,
any of the offensive materials or substances hereinbefore
named which the person so convicted has placed or know-
ingly permitted to remain upon such city or town lot,
public ground, market space, common, or land, contrary
to the provisions of this section, and his failure to do so
shall constitute a misdemeanor and a second offense
against the provisions of this section. The continued
failure or refusal of such convicted person to bury or
destroy such offensive materials and substances as pro-
vided herein shall constitute a separate, distinct and
additional offense for each successive twenty-four hour
period of such failure and refusal. Any person convicted
of any offense described in this paragraph shall be pun-
ished by a fine of not less than twenty dollars nor more
than five hundred dollars.

Justices of the peace shall have concurrent jurisdiction
with the circuit, criminal and intermediate courts of the
state for the enforcement of the criminal penalties of this
section.

CHAPTER 20. NATURAL RESOURCES.

Article
1. Organization and Administration.
5. Water Resources.
5-a. Water Pollution Control Act.
7. Law Enforcement, Procedures and Penalties.
Section 7. Additional Powers, Duties and Services of Director.—In addition to all other powers, duties and responsibilities granted and assigned to the director in this chapter and elsewhere by law, the director is hereby authorized and empowered to:

1. With the advice of the commission, prepare and administer, through the various divisions created by this chapter, a long-range comprehensive program for the conservation of the natural resources of the state which best effectuates the purpose of this chapter and which makes adequate provisions for the natural resources laws of the state;

2. Sign and execute in the name of the state by the “Department of Natural Resources” any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals;

3. Conduct research in improved conservation methods and disseminate information matters to the residents of the state;

4. Conduct a continuous study and investigation of the habits of wildlife, and for purposes of control and protection to classify by regulation the various species into such categories as may be established as necessary;

5. Prescribe the locality in which and the manner and method by which the various species of wildlife may be taken, or chased, unless otherwise specified by this chapter;

6. Fix by regulation the open seasons and the bag, creel, size, age, weight and sex limits with respect to wildlife in this state;

7. Hold at least six meetings each year at such times and at such points within the state, as in the discretion of the director may appear to be necessary and proper for the purpose of giving interested persons in the various sections of the state an opportunity to be heard concerning open seasons for their respective areas, before such seasons and bag limits are fixed;
(8) Suspend open hunting seasons upon any or all wildlife in any or all counties of the state with the prior approval of the governor in case of an emergency such as a drought, forest fire hazard or epizootic of disease among wildlife. The suspension shall continue during the existence of the emergency and until rescinded by the director. Suspension, or reopening after such suspension, of open seasons may be made upon twenty-four hours' notice by delivery of a copy of the order of suspension or reopening to the wire press agencies at the state capitol;

(9) Supervise the fiscal affairs and responsibilities of the department;

(10) Designate such localities as he shall determine to be necessary and desirable for the perpetuation of any species of wildlife;

(11) Enter private lands to make surveys or inspections for conservation purposes, to investigate for violations of provisions of this chapter, to serve and execute warrants and processes, to make arrests and to otherwise effectively enforce the provisions of this chapter;

(12) Acquire for the state in the name of the "Department of Natural Resources" by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the department of natural resources, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property, including lands and waters, which he deems suitable for the following purposes:

(a) For state forests for the purpose of growing timber, demonstrating forestry, furnishing or protecting watersheds or providing public recreation;

(b) For state parks or recreation areas for the purpose of preserving scenic, esthetic, scientific, cultural, archaeological or historical values or natural wonders, or providing public recreation;

(c) For public hunting, trapping, or fishing grounds or waters for the purpose of providing areas in which the public may hunt, trap or fish, as permitted by the provisions of this chapter, and the rules and regulations issued hereunder;
(d) For fish hatcheries, game farms, wildlife research areas and feeding stations;

(e) For the extension and consolidation of lands or waters suitable for the above purposes by exchange of other lands or waters under his supervision;

(f) For such other purposes as may be necessary to carry out the provisions of this chapter;

(13) Capture, propagate, transport, sell or exchange any species of wildlife as may be necessary to carry out the provisions of this chapter;

(14) Exercise the powers granted by this chapter for the protection of forests, and regulate fires and smoking in the woods or in their proximity at such times and in such localities as may be necessary to reduce the danger of forest fires;

(15) Cooperate with departments and agencies of state, local and federal governments in the conservation of natural resources and the beautification of the state;

(16) Report to the governor each year all information relative to the operation and functions of his department and he shall make such other reports and recommendations as may be required by the governor, including an annual financial report covering all receipts and disbursements of the department for each fiscal year, and he shall deliver such report to the governor on or before the first day of December next after the end of the fiscal year so covered. A copy of such report shall be delivered to each house of the Legislature when convened in January next following;

(17) Keep a complete and accurate record of all proceedings, record and file all bonds and contracts taken or entered into, and assume responsibility for the custody and preservation of all papers and documents pertaining to his office, except as otherwise provided by law;

(18) Offer and pay, in his discretion, rewards for information respecting the violation, or for the apprehension and conviction of any violators, of any of the provisions of this chapter;

(19) Require such reports as he may deem to be necessary from any person issued a license or permit
under the provisions of this chapter, but no person shall be required to disclose secret processes or confidential data of competitive significance;

(20) Purchase as provided by law all equipment necessary for the conduct of his department;

(21) Conduct and encourage research designed to further new and more extensive uses of the natural resources of this state and to publicize the findings of such research;

(22) Encourage and cooperate with other public and private organizations or groups in their efforts to publicize the attractions of the state;

(23) Accept and expend, without the necessity of appropriation by the Legislature, any gift or grant of money made to the department for any and all purposes specified in this chapter, and he shall account for and report on all such receipts and expenditures to the governor;

(24) Cooperate with the state historian and other appropriate state agencies in conducting research with reference to the establishment of state parks and monuments of historic, scenic and recreational value, and to take such steps as may be necessary in establishing such monuments or parks as he deems advisable.

(25) Maintain in his office at all times, properly indexed by subject matter, and also in chronological sequence, all rules and regulations made or issued under the authority of this chapter. Such records shall be available for public inspection on all business days during the business hours of working days as prescribed by the state board of public works.

(26) Delegate the powers and duties of his office, except the power to execute contracts, to appointees and employees of the department, who shall act under the direction and supervision of the director and for whose acts he shall be responsible;

(27) Conduct schools, institutes and other educational programs, apart from or in cooperation with other governmental agencies, for instruction and training in all phases of the natural resources program of the state; and

(28) Promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code,
to implement and make effective the powers and duties vested in him by the provisions of this chapter and take such other steps as may be necessary in his discretion for the proper and effective enforcement of the provisions of this chapter: Provided, That all rules and regulations relating to articles five and five-a of this chapter shall be promulgated by the water resources board.

Article 5. Water Resources.

PART I. GENERAL PROVISIONS

Section
1. Water resources board and division of water resources; duties and functions.
2. Definitions.
3. Water resources board created; composition and organization of board; others to assist board and division.
4. Functions, services and reports of chief of the division of water resources.
5. General powers and duties of chief of division of water resources and water resources board with respect to water resources.

PART II. SLACK-WATER DAMS

7. Dam construction initiated; approval by public authority; costs; plans.
8. Requests to director for dam construction; costs; procedure.
9. Payment of dam costs; deficiencies and refunds.
10. Contracts for dam construction.
11. Dam supervision, maintenance and management.
12. Titles to and leases of lands; management and funds.
13. Future plans for road and other construction; coordination.

PART III. HUSBANDRY OF WATER AREAS

14. Water areas beautification; investigations; enforcement.
15. Litter along streams, etc.; violations; evidence; penalties.

PART IV. SEVERABILITY


PART I. GENERAL PROVISIONS.

Section 1. Water Resources Board and Division of Water Resources; Duties and Functions.—The water resources board shall have within its jurisdiction and supervision the Ohio river valley water sanitation commission from the state of West Virginia and the interstate commission on the Potomac river basin from the state of West Virginia. The division of water resources, created and established in article one of this chapter, shall have within
its jurisdiction and supervision the administration and
enforcement of all laws relating to slack-water dams,
stream and water areas beautification, and the conserva-
tion, development, protection, enjoyment and use of the
water resources of the state consistent with the provisions
of this chapter. The chief of the division shall be pri-
marily responsible for the execution and administration
of the provisions of this article and article five-a as an
integral part of the natural resources program of the state
and shall organize and staff his division so as to accom-
plish these ends in an orderly, efficient and economical
manner. The division chief shall give consideration to
other functions and services of the department and, where-
ever practicable, shall coordinate the plans and programs
of his division with the functions and services of other
divisions, offices and activities of the department, and
other departments and agencies of state government.

Sec. 2. Definitions.—Unless the context in which used
clearly requires a different meaning, as used in this
article:

(a) "Director" shall mean the director of the depart-
ment of natural resources;

(b) "Board" shall mean the state water resources
board;

(c) "Chief" shall mean the chief of the division of water
resources of the department of natural resources;

(d) "Person," "persons" or "applicant" shall mean any
public or private corporation, institution, association, firm
or company organized or existing under the laws of this
or any other state or country; the state of West Virginia;
governmental agency; political subdivision; county court;
municipal corporation; industry; sanitary district; public
service district; drainage district; soil conservation dis-
trict; watershed improvement district; partnership; trust;
estate; person or individual; group of persons or individ-
uals acting individually or as a group; or any other legal
entity whatever;

(e) "Water resources," "water" or "waters" shall
mean any and all water on or beneath the surface of the
ground, whether percolating, standing, diffused or flow-
(f) "Code" shall mean the code of West Virginia, one thousand nine hundred thirty-one, as amended.
ber whose office shall be vacant. Each vacancy occurring in the office of a member of the board shall be filled by appointment within sixty days after such vacancy occurs. Each member of the board shall, out of moneys appropriated for such purposes, be paid as compensation for attending meetings of the board and for necessary travel to and from such meetings forty dollars per day. In addition to such compensation, each member of the board shall be reimbursed, out of moneys appropriated for such purposes, all sums which he necessarily shall expend in the discharge of his duties as a member of such board. The director of the division of sanitary engineering of the state department of health shall perform such services as the board and the chief of the division of water resources may request of him in connection with the discharge of their duties, and he shall be reimbursed, out of moneys appropriated for such purposes, all sums which he necessarily shall expend in the performance of such services. Nothing contained in this article or in article five-a of this chapter, however, shall be construed to limit or interfere with the power of the state department of health to select, employ and direct the director of the division of sanitary engineering of said department, or any employee thereof who in any way may perform any services for the board or the division of water resources. The college of engineering at West Virginia University, under the direction of the dean thereof, shall, insofar as it can, without interfering with its usual and regular activities, aid and assist the board and the division of water resources in the study and research of questions connected with water pollution and the control and reduction thereof in accordance with the provisions of article five-a of this chapter. The dean of the college of engineering shall be reimbursed, out of moneys appropriated for such purposes, all sums which he necessarily shall expend in the performance of any services he may render to the board and the division under the provisions hereof.

A majority of the board shall constitute a quorum for the transaction of business. The board shall meet at such times and places as it may determine and shall meet on call of the chairman. It shall be the duty of the chairman
to call a meeting of the board on the written request of
three members thereof. The board shall keep an accurate
record of all of its proceedings and maintain such board
records and make certificates thereof or therefrom as may
be required by law. The board shall employ a secretary
and necessary clerical assistance.

Sec. 4. Functions, Services and Reports of Chief of the
Division of Water Resources.—The chief of the division
of water resources shall make surveys and investigations
of the water resources of the state and, as soon as practi-
cable, shall inventory the water resources of the state
and to the extent practicable shall divide the state into
watershed drainage areas in making this inventory. The
chief shall investigate and study the problems of agri-
culture, industry, conservation, health, water pollution,
domestic and commercial uses and allied matters as they
relate to the water resources of the state, and shall make
and formulate comprehensive plans and recommenda-
tions for the further development, improvement, protec-
tion, preservation, regulation and use of such water re-
sources, giving proper consideration to the hydrologic
cycle in which water moves. Annually, not later than
the first of November, he shall prepare and publish a
full report on his work as to the collection and evalua-
tion of the information which has been obtained in ac-
cordance with the requirements of this section and shall
include in this report the plans and recommendations
which have been formulated pursuant to the requirements
of this section. The report shall include his reasons for
such plans and recommendations, as well as any changes
in the law which are deemed desirable to effectuate such
plans and recommendations. Such report shall be made
available to the public at a reasonable price to be deter-
mined by the chief and the director.

The chief may request, and, upon his request, shall be
entitled to receive from any agency of the state or any
political subdivision thereof, or from any other person
who engages in a commercial use or controls any of the
water resources of the state, such necessary information
and data as will assist him in obtaining a complete picture
of the water resources of the state and the existing control and commercial use thereof. The chief shall reimburse such agencies, political subdivisions and other persons for any expenses, which would not otherwise have been incurred, in making such information and data available to him.

Sec. 5. General Powers and Duties of Chief of Division of Water Resources and Water Resources Board with Respect to Water Resources.—(a) In addition to all other powers and duties of the chief of the department's division of water resources, as prescribed in this article or elsewhere by law, the chief, under the supervision of the director, shall have and may exercise the following powers and authority and shall perform the following duties:

(1) To conduct, or contract for the conducting of, scientific investigations, experiments and research, and to collect data, concerning the water resources of the state; and

(2) To advise all users of water resources as to the availability of water resources and the most practicable method of water diversion, use, development and conservation.

(b) In addition to all other powers and duties of the water resources board, as prescribed in this article or elsewhere by law, the board shall have and may exercise the following powers and authority and shall perform the following duties:

(1) To enter into compacts and agreements concerning this state's share of waters in watercourses where a portion of such waters is contained within the territorial limits of this state or of a neighboring state or states, subject to the approval of the Legislature;

(2) To cooperate with federal officers and agencies, other state agencies and officers, interstate agencies, and other interested persons in the conservation, improvement and development of water resources, and to this end, the board may receive moneys from such agencies, officers and persons on behalf of the state: Provided,
That the board shall pay all moneys so received into a special fund hereby created in the state treasury, which fund shall be expended under the direction of the board solely for the purpose or purposes for which the grant, gift or contribution shall have been made; and

(3) To promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers, duties and responsibilities vested in the board and the chief by the provisions of this article and otherwise by law.

(c) The board, any member thereof and the chief, and their duly authorized representatives shall have the power and authority to enter at all reasonable times upon any private or public property for the purpose of making surveys, examinations, investigations and studies needed in the gathering of facts concerning the water resources of the state and their use, subject to responsibility for any damage to the property entered. Upon entering, and before making any survey, examination, investigation and study, such person shall immediately present himself to the occupant of the property. Upon entering property used in any manufacturing, mining or other commercial enterprise, or by any municipality or governmental agency or subdivision, and before making any survey, examination, investigation and study, such person shall immediately present himself to the person in charge of the operation, and if he is not available, to a managerial employee. All persons shall cooperate fully with the person entering such property for such purposes. Upon refusal of the person owning or controlling such property to permit such entrance or the making of such surveys, examinations, investigations and studies, the board or the chief may apply to the circuit court of the county in which such property is located, or to the judge thereof in vacation, for an order permitting such entrance or the making of such surveys, examinations, investigations and studies; and jurisdiction is hereby conferred upon such court to enter such order upon a showing that the relief asked is necessary for the proper enforcement of this article:

Provided, however, That a dwelling occupied for residential purposes shall not be entered without a search warrant.
(d) The board is hereby authorized to hire one or more individuals to serve as hearing examiners on a full or part-time basis. Such individuals may be attorneys at law admitted to practice before any circuit court of this state. All such hearing examiners shall be individuals authorized to take depositions under the laws of this state.

PART II. SLACK-WATER DAMS.

Sec. 6. Location and Construction of Slack-water Dams. —The state road commissioner, in constructing public highways, bridges and culverts, as provided by law, and any municipal corporation constructing or improving public streets, viaducts, bridges and culverts, either severally or jointly, upon request of the director of the department of natural resources and with the approval of the state road commissioner, may construct and maintain slack-water dams in connection with such public highways, streets, bridges, culverts or viaducts so as to create reservoirs, ponds, water parks, basins, lakes or other incidental works to conserve the water supply of the state.

Sec. 7. Dam Construction Initiated; Approval by Public Authority; Costs; Plans.—The director may request the public authority in charge of the construction of state highways, highway bridges and culverts or municipal streets, viaducts, bridges and culverts to construct slack-water dams in connection with the construction of any such public highway, street, bridge, viaduct, or culvert whenever, in his opinion, the construction of such dams is desirable and feasible for the economical creation and construction of reservoirs, ponds, water parks, basins, lakes or other incidental works for the conservation of the water supply of the state.

The public authority in charge of such construction may approve such request when, in its opinion, the construction of such dams will not unnecessarily delay or hinder the construction of the public highway, street, bridge, viaduct or culvert, and will not interfere with the value or use of such highway, street, bridge, viaduct or culvert for highway purposes.
If such request is approved, the director, in cooperation with the state road commissioner and the public authority participating in the project, shall make a survey and prepare plans, specifications and estimates for the construction of such dams, reservoirs, ponds, water parks, basins, lakes or other incidental works in connection therewith.

Upon approval of the plans and specifications and the determination to proceed with the project, the director shall enter into an agreement with the public authority on the distribution of the cost and expense of the construction of such dams and incidental works in connection therewith. The portion of the cost to be paid by the department shall be paid from any funds appropriated for or paid into the department and available for such purpose. No public authority shall proceed with the construction of such a project until there is full compliance with the other requirements of law relative to the construction of dams and the director shall have satisfied the public authority that sufficient funds are available for the completion of the dam.

Such dams shall be constructed under and subject to any and all laws governing the construction of state, county or municipal highways, streets, viaducts, bridges or culverts. Any public authority undertaking construction pursuant to this article shall proceed in the same manner as provided for the construction of public highways or street improvements.

Nothing herein contained shall require the public authority so concerned to delay or postpone construction of the principal public improvement, although approval of the combined project may have been given.

Sec. 8. Requests to Director for Dam Construction; Costs; Procedure.—Any department or division of the state government, any county, municipal corporation, park board, district, organization, club, corporation or private person may petition the director for the construction of dams and reservoir projects in connection with the construction of any public highway, bridge, culvert, street or viaduct.
Upon receipt of such a petition and its approval by the director, the director shall proceed as authorized by section seven of this article. If the public authority in charge of the construction of such public highway, street, bridge, viaduct or culvert approves the request, then the director shall enter into an agreement with the public authority and those petitioning for the construction of such dam or reservoir on the apportionment of the cost and expense of construction. The cost and expense of such dam project shall include the cost of clearing and grubbing and the cost of property and the damages incidental thereto. Such agreement shall also contain provisions for the proper maintenance and repair of such projects after completion, and shall apportion the revenue derived therefrom between the department, the public authority and the petitioner or petitioners.

Sec. 9. Payment of Dam Costs; Deficiencies and Refunds.—In all cases in which there is a petition for the construction of a slack-water dam and reservoir project, the director, as a condition precedent to the construction of such project, shall require the petitioner or petitioners to pay his or their share of the cost and expense of such project into the hands of the treasurer of the state to be kept in a separate account for each such project and to be disbursed upon the order of the director. If the estimated cost paid into the state treasury is found to be insufficient, the deficiency shall be made up by the parties bearing the cost before any further work is done. If the deficiency is not made up within sixty days after notice to such parties, the cost paid in, less the amount of expense incurred by the director and the cooperating public authorities, shall be refunded to the donor. After completion of the work, any amount remaining in the state treasury to the credit of the project shall likewise be refunded.

Sec. 10. Contracts for Dam Construction.—In the construction of slack-water dams, reservoirs and other incidental works, the state road commissioner and the public authority of a municipality shall proceed as provided by law and shall enter into contracts as provided by law.
Sec. 11. Dam Supervision, Maintenance and Management.—The director shall have the supervision, care and control of all slack-water dams, reservoirs, ponds, water parks, basins, lakes or other incidental works constructed pursuant to Part II (slack-water dams) of this article and shall maintain and keep them in repair. The cost of such maintenance and repair shall be paid from any funds appropriated to the department for that purpose or paid into the state treasury as agreed upon with the public or contracting authorities cooperating in the construction of such projects.

Such projects may also be maintained by any department or division of state government or other public authorities leasing or operating the projects, through agreements made with said director. All rentals derived from the lease of such projects shall be used by said director in the maintenance or repair of all such projects. The costs and expenses of the reconstruction of any such projects shall be allocated, unless otherwise agreed, on the same basis and in the same proportion as the costs and expenses of the original project were allocated among the contracting parties: Provided, That the state road commission shall not be required to contribute any portion of the cost of maintaining or repairing any slack-water dam, reservoir, pond, water park, basin, lake or other incidental work when the maintenance of the road, bridge, or culvert would not have required such expenditure had it not been for the installation of such slack-water dam project or projects.

Sec. 12. Titles to and Leases of Lands; Management and Funds.—The title to or lease of any such lands, waters or riparian rights shall be taken by the department, subject to the approval of the governor and the attorney general, in the name of the state. The rentals required by any such lease and the purchase price of any such lands, waters or riparian rights, as well as the department's share of the costs and expenses of constructing any such slack-water dams, reservoirs, ponds, water parks, basins, lakes or other incidental works on such lands, may be paid for from any funds appropriated for the use of or
paid into the department and available for such purpose.
To effectuate the purposes of the sections of this article dealing with slack-water dams, the director may accept contributions to such funds from individuals, associations, clubs, organizations and corporations.

Sec. 13. Future Plans for Road and Other Construction; Coordination.—Upon request by the director, the state road commissioner or other public authority shall advise the director of any planned or contemplated construction of new public highways, bridges, culverts, viaducts, or streets; and thereupon, it shall become the duty of the director to coordinate the plans of the department, if any, with the state road commission or other public authority to the end that any such slack-water dam project shall not cause a delay in or interfere with the construction of the principal project, and to the end that such additional project shall, in all respects, be in conformity with recognized road construction standards and practices.

PART III. HUSBANDRY OF WATER AREAS.

Sec. 14. Water Areas Beautification; Investigations; Enforcement.—The division of water resources shall be responsible for the department’s program and practices in the husbandry of rivers, streams, creeks, branches, brooks, lakes, industrial settling basins and ponds, waste treatment facilities, and other water areas (except farm ponds) and the lands immediately adjacent thereto. The chief of the division shall make such investigations and surveys, conduct such schools and public meetings and take such other steps as may be expedient in the conservation, beautification, improvement and use of all such water areas of the state. He shall cooperate with the department’s chief law enforcement officer in enforcing the provisions of law prohibiting the disposal of litter in, along and near such water areas.

Sec. 15. Litter along Streams, etc.; Violations; Evidence; Penalties.—It shall be unlawful to place, deposit, dump or throw, or cause to be placed, deposited, dumped or thrown, any litter, garbage, refuse, trash, cans, bottles, papers, ashes, carcass of any dead animal or any part
thereof, offal or any other offensive or unsightly matter into any river, stream, creek, branch, brook, lake or pond, or upon the surface of any land within one hundred yards thereof, or in such location that high water or normal drainage conditions will cause any such materials or substances to be washed into any river, stream, creek, branch, brook, lake or pond.

No portion of this section shall be construed to restrict an owner, renter or lessee in the use of his own private property or rented or leased property or to prohibit the disposal of any industrial and other wastes into waters of this state in a manner consistent with the provisions of article five-a of this chapter. But if any owner, renter or lessee, private or otherwise, knowingly permits any such materials or substances to be placed, deposited, dumped or thrown in such location that high water or normal drainage conditions will cause any such materials or substances to wash into any river, stream, creek, branch, brook, lake or pond, it shall be deemed prima facie evidence that such owner, renter or lessee intended to violate the provisions of this section.

In addition to enforcement by the director, the chief of the division of water resources, and the department's chief law enforcement officer, the provisions of this section may be enforced by all other proper law enforcement agencies.

Any person violating any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period not to exceed six months, or, in the discretion of the court, by both such fine and imprisonment.

PART IV. SEVERABILITY.

Sec. 16. Severability of Provisions.—If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or its
Article 5-a. Water Pollution Control Act.

PART I. GENERAL PROVISIONS AND PUBLIC POLICY

Section
1. Declaration of policy.
2. Definitions.

PART II. CHIEF OF DIVISION OF WATER RESOURCES AND WATER RESOURCES BOARD

3. General powers and duties of chief of division of water resources and water resources board with respect to water pollution.
4. Cooperation with other governments and agencies.

PART III. PERMITS

5. When permits required.
6. Application for permit; form of application; information required; fees.
7. Procedure concerning permits required by section five; procedure as to permits incident to remedial action; transfer of permits.
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15. Appeal to water resources board.

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17. Actions to abate nuisances; injunctive relief.
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PART VII. VIOLATIONS AND PENALTIES

19. Violations; criminal penalties.
19-a. Civil liability.
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PART VIII. SHORT TITLE; CONSTRUCTION AND SEVERABILITY

22. Article for benefit of state only.
23. Conflicting provisions; departments of health.
PART I. GENERAL PROVISIONS AND PUBLIC POLICY.

Section 1. Declaration of Policy.—It is declared to be the public policy of the state of West Virginia to maintain reasonable standards of purity and quality of the waters of the state consistent with (1) public health and public enjoyment thereof; (2) the propagation and protection of animal, bird, fish, aquatic and plant life; and (3) the attraction, development, maintenance and expansion of mining, manufacturing and other business and industry, and to that end to encourage by voluntary cooperation, and to require when necessary, the use of available, reasonable, practicable and economically feasible methods to control and reduce the pollution of the waters of the state of West Virginia.

Sec. 2. Definitions.—Unless the context in which used clearly requires a different meaning, as used in this article:

(a) “Director” shall mean the director of the department of natural resources;

(b) “Board” shall mean the state water resources board;

(c) “Chief” shall mean the chief of the division of water resources of the department of natural resources;

(d) “Person,” “persons” or “applicant” shall mean any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agency; political subdivision; county court; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any other legal entity whatever;

(e) “Water resources,” “water” or “waters” shall mean any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and shall include, without limiting
the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells and watercourses;

(f) "Pollution" shall mean the discharge or deposit, directly or indirectly, of sewage, industrial wastes, or other wastes, of whatever kind or character, in or near any waters of the state, in such condition, manner or quantity, as to (1) contaminate or substantially contribute to the contamination of any of such waters, or (2) alter or substantially contribute to the alteration of the physical, chemical or biological properties of any of such waters, if such contamination or alteration, or the resulting contamination or alteration where a person only contributes thereto, is to such an extent as to make any of such waters (i) directly or indirectly detrimental to the public health, or (ii) directly or indirectly and unreasonably detrimental to existing animal, bird, fish, aquatic or plant life, or (iii) unreasonably unsuitable for present or future domestic, commercial, industrial, agricultural, recreational or other legitimate uses: Provided, That sewage, industrial wastes, or other wastes shall not include animal or commercial fertilizer used or stored for use in agriculture, horticulture or industry;

(g) "Sewage" shall mean water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present;

(h) "Industrial wastes" shall mean any liquid, gaseous, solid or other waste substance, or a combination thereof, resulting from any process of industry, manufacturing, trade or business, or from the development, processing or recovery of any natural resources; and the admixture with such industrial wastes of sewage, or other wastes, as hereinafter defined, shall also be considered "industrial wastes" within the meaning of this article;

(i) "Other wastes" shall mean garbage, refuse, decayed wood, sawdust, shavings, bark, and other wood debris and residues, sand, lime, cinders, ashes, offal, night soil, silt,
oil, tar, dyestuffs, acids, chemicals, and all other materials
and substances not sewage or industrial wastes which may
cause or might reasonably be expected to cause or to
contribute to the pollution of any of the waters of the
state;

(j) "Establishment" shall mean an industrial establish-
ment, mill, factory, tannery, paper or pulp mill, mine,
colliery, breaker or mineral processing operation, quarry,
refinery, and each and every industry or plant or works
in the operation of which industrial wastes, or other
wastes are produced;

(k) "Sewer system" shall mean pipe lines or conduits,
pumping stations, and force mains, and all other construc-
tions, facilities, devices and appliances appurtenant there-
eto, used for collecting or conducting sewage, industrial
wastes, or other wastes to a point of disposal or treatment;

(l) "Treatment works" shall mean any plant, facility,
means, system, disposal field, lagoon, pumping station,
constructed drainage ditch or surface water intercepting
ditch, diversion ditch above or below the surface of the
ground, settling tank or pond, incinerator, area devoted
to sanitary landfills, or other works not specifically men-
tioned herein, installed for the purpose of treating, neu-
tralizing, stabilizing, holding or disposing of sewage, in-
dustrial wastes, or other wastes and/or for the purpose of
regulating or controlling the quantity and rate of flow
thereof;

(m) "Disposal system" shall mean a system for dis-
posing of sewage, industrial wastes, or other wastes, and
shall be construed to include sewer systems and treat-
ment works;

(n) "Outlet" shall mean the terminus of a sewer sys-
tem or the point of emergence of any water-carried sew-
age, industrial wastes, or other wastes, or the effluent
therefrom, into any of the waters of this state;

(o) "Activity" or "activities" shall mean any activity
or activities for which a permit is required by the pro-
visions of section five of this article; and

(p) "Code" shall mean the code of West Virginia, one
thousand nine hundred thirty-one, as amended.
PART II. CHIEF OF DIVISION OF WATER RESOURCES AND WATER RESOURCES BOARD.

Sec. 3. General Powers and Duties of Chief of Division of Water Resources and Water Resources Board with Respect to Water Pollution.—(a) In addition to all other powers and duties of the chief of the department's division of water resources, as prescribed in this article or elsewhere by law, the chief, under the supervision of the director, shall have and may exercise the following powers and authority and shall perform the following duties:

1. To encourage voluntary cooperation by all persons in controlling and reducing the pollution of the waters of this state, and to advise, consult and cooperate with all persons, all agencies of this state, the federal government or other states, and with interstate agencies in the furtherance of the purposes of this article;

2. To encourage the formulation and execution of plans by cooperative groups or associations of municipal corporations, industries, and other users of waters of the state, who, jointly or severally, are or may be the source of pollution of the same waters, for the control and reduction of pollution;

3. To encourage, participate in, or conduct or cause to be conducted studies, scientific or other investigations, research, experiments and demonstrations relating to water pollution, and the causes, control and reduction thereof, and to collect data with respect thereto, all as may be deemed advisable and necessary to carry out the purposes of this article;

4. To study and investigate all problems concerning water flow, water pollution and the control and reduction of such pollution, and to make reports and recommendations with respect thereto;

5. To collect and disseminate information relating to water pollution and the control and reduction thereof;

6. To develop a public education and promotion program to aid and assist in publicizing the need and securing support for pollution control and abatement;
37. (7) To sample ground and surface water with sufficient
38. frequency to ascertain the standards of purity or quality
39. from time to time of the waters of the state;
40. (8) To develop programs for the control and reduction
41. of the pollution of the waters of the state; and
42. (9) To exercise general supervision over the adminis-
43. tration and enforcement of the provisions of this article,
44. and all orders issued pursuant to the provisions of this
45. article.
46. (b) In addition to all other powers and duties of the
47. water resources board, as prescribed in this article or else-
48. where by law, the board shall have and may exercise the
49. following powers and authority and shall perform the
50. following duties:
51. (1) To cooperate with federal officers and agencies,
52. other state agencies and officers, interstate agencies, and
53. other interested persons in the control and reduction of
54. water pollution, and to this end, and for the purpose of
55. studies, scientific or other investigations, research, experi-
56. ments and demonstrations pertaining thereto, the board
57. may receive moneys from such agencies, officers and per-
58. sons on behalf of the state: Provided, That the board
59. shall pay all moneys so received into a special fund hereby
60. created in the state treasury, which fund shall be ex-
61. pended under the direction of the board solely for the
62. purpose or purposes for which the grant, gift or contribu-
63. tion shall have been made;
64. (2) To cooperate with any interstate agencies for the
65. purpose of formulating, for submission to the Legislature,
66. interstate compacts and agreements relating to the con-
67. trol and reduction of water pollution;
68. (3) To promulgate rules and regulations, in accordance
69. with the provisions of chapter twenty-nine-a of this code,
70. to implement and make effective the powers, duties and
71. responsibilities vested in the board and the chief by the
72. provisions of this article and otherwise by law: Provided,
73. That all such rules and regulations shall be consistent
74. with the declaration of public policy set forth in section
75. one of this article;
76. (4) In cooperation with the college of engineering at
West Virginia University, to conduct studies, scientific or other investigations, research, experiments and demonstrations in an effort to discover economical and practical methods for the elimination, disposal, control and treatment of sewage, industrial wastes, and other wastes, and the control and reduction of water pollution, and to this end, the board may cooperate with any public or private agency and receive therefrom, on behalf of the state and for deposit in the state treasury, any moneys which such agency may contribute as its part of the expenses thereof, and all gifts, donations or contributions received as aforesaid may be expended according to the requirements or directions of the donor or contributor without the necessity of an appropriation therefor, except that an accounting thereof shall be made in the fiscal reports of the board.

(c) The board is hereby authorized to hire one or more individuals to serve as hearing examiners on a full or part-time basis. Such individuals may be attorneys at law admitted to practice before any circuit court of this state. All such hearing examiners shall be individuals authorized to take depositions under the laws of this state.

(d) The board, any member thereof and the chief, and their duly authorized representatives, shall have the power and authority to make investigations, inspections and inquiries concerning compliance with the provisions of this article, any order made and entered in accordance with the provisions of this article, any rule or regulation promulgated by the board, and with the terms and conditions of any permit issued in accordance with the provisions of section seven of this article. In order to make such investigations, inspections and inquiries, the board, any member thereof and the chief, and their duly authorized representatives, shall have the power and authority to enter at all reasonable times upon any private or public property, subject to responsibility for any damage to the property entered. Upon entering, and before making any investigation, inspection and inquiry, such person shall immediately present himself to the occupant of the property. Upon entering property used in any manufacturing, mining or other commercial enterprise, or by any municipality or governmental agency or subdivision, and be-
fore making any investigation, inspection and inquiry, such person shall immediately present himself to the person in charge of the operation, and if he is not available, to a managerial employee. All persons shall cooperate fully with the person entering such property for such purposes. Upon refusal of the person owning or controlling such property to permit such entrance or the making of such inspections, investigations and inquiries, the board or the chief may apply to the circuit court of the county in which such property is located, or to the judge thereof in vacation, for an order permitting such entrance and the making of such inspections, investigations and inquiries; and jurisdiction is hereby conferred upon such court to enter such order upon a showing that the relief asked is necessary for the proper enforcement of this article: Provided, however, That a dwelling occupied for residential purposes shall not be entered without a search warrant.

(e) The board is hereby authorized and empowered to investigate and ascertain the need and factual bases for the establishment of public service districts as a means of controlling and reducing pollution from unincorporated communities and areas of the state, and to present reports and recommendations thereon to the county court or courts of the areas concerned, together with a request that such county court or courts create a public service district or districts, as therein shown to be needed and required and as provided in article thirteen-a, chapter sixteen of this code.

Sec. 4. Cooperation with Other Governments and Agencies.—The board is hereby designated as the water pollution control agency for this state for all purposes of the Federal Water Pollution Control Act, Public Law 660, 84th Congress (70 Stat. 498), approved July ninth, one thousand nine hundred fifty-six, as amended by Public Law 87-88, 87th Congress (75 Stat. 204), approved July twentieth, one thousand nine hundred sixty-one, and subsequent amendatory provisions thereof, all hereinafter called the “federal act,” and is hereby authorized to take all action necessary or appropriate to secure to
this state the benefits of said act. In carrying out the purposes of this section, the board, in addition to any other action which may be necessary or appropriate, is hereby authorized to cooperate with the surgeon general of the United States public health service, other agencies of the federal government, other states, interstate agencies and other interested parties in all matters relating to water pollution, including the development of programs for controlling and reducing water pollution and improving the sanitary conditions of waters; to apply for and receive, on behalf of this state, funds made available to the board under the aforesaid federal act by any agency of the federal government, on condition that all moneys received from any federal agency as herein provided shall be paid into the state treasury and shall be expended, under the direction of the board, solely for the purpose or purposes for which the grant or grants shall have been made; to approve projects for which application for loans or grants under the federal act is made by any municipality (including any city, town, district or other public body created by or pursuant to the laws of this state and having jurisdiction over the disposal of sewage, industrial wastes, or other wastes) or agency of this state or by any interstate agency; and to participate through its authorized representatives in proceedings under the federal act to recommend measures for the abatement of water pollution originating in this state. The governor is hereby authorized, in his discretion, to give consent on behalf of this state to requests by the secretary of the United States department of health, education and welfare to the attorney general of the United States for the bringing of actions for the abatement of such pollution. Whenever a federal law requires the approval or recommendation of a state agency or any political subdivision of the state in any matter relating to the water resources of the state, the board, subject to approval of the Legislature, is hereby designated as the sole agency to give the approval or recommendation required by the federal law, unless the federal law specifically requires the approval or recommendation of some other state agency or political subdivision of the state.
PART III. PERMITS.

Sec. 5. When Permits Required.—(a) It shall be unlawful for any person, until the department’s permit therefor has been granted, to:

(1) Extend, modify or add to any industrial or commercial establishment so as to result in or effect any substantial change in the kind, characteristics and rate of flow of the sewage, industrial wastes, or other wastes or the effluent therefrom, into the waters of this state;

(2) Make, cause or permit to be made any new outlet, or substantially enlarge or add to the load of any existing outlet, emerging into the waters of this state, whether operated by gravity flow or pump, or a combination thereof, including, without limiting the generality of the foregoing, outlets for mine water drainage, plant drainage, institution drainage and commercial and industrial establishment drainage of whatever kind or character;

(3) Acquire, construct, install or operate a new disposal system for the direct or indirect discharge or deposit of sewage, industrial wastes, or other wastes or the effluent therefrom, into the waters of this state; or

(4) Substantially extend, modify or add to a new or existing disposal system for the direct or indirect discharge or deposit of sewage, industrial wastes, or other wastes or the effluent therefrom, into the waters of this state;

if any such activity will cause a material pollution of the waters of the state.

(b) Where a person has a number of outlets emerging into the waters of this state in close proximity to one another, such outlets may be treated as a unit for the purposes of this section, and only one permit issued for all of such outlets.

(c) Unless such permit was obtained and remains in full force and effect, it shall also be unlawful for any person to operate or use such extension or modification of, or addition to, such industrial or commercial establishment, or to operate or use such new outlet or such existing outlet with such enlarged or additional load, or to operate
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or use such new disposal system, or to operate or use such
extension or modification of, or addition to, such new or
existing disposal system.

Sec. 6. Application for Permit; Form of Application;
Information Required; Fees.—The chief shall prescribe
a form of application for all permits for any activity spec-
cified in section five of this article relating other than
solely to sewage. The director of the division of sanitary
engineering of the state department of health, in coop-
eration with the chief, shall prescribe a form of applica-
tion for all permits for any activity relating solely to
sewage. All applications for permits for any activity re-
lating other than solely to sewage shall be submitted to
the division of water resources, and those applications for
permits for any activity relating solely to sewage shall
be submitted to the division of sanitary engineering of the
state department of health. All applications shall be
on the prescribed form. An applicant shall furnish all
information reasonably required by any such form, in-
cluding without limiting the generality of the forego-
ing, a plan of maintenance and proposed method of op-
eration of the activity or activities: Provided, That, not-
withstanding anything in this article to the contrary,
where the activity is an integral part of a secret operat-
ing process, the required information shall be limited
solely to data which will show the kind, characteristics,
amount and rate of flow of sewage, industrial wastes, or
other wastes or the effluent therefrom into the waters of
the state. Until all such required information is furnished,
an application shall not be considered a complete ap-
plication.

A permit fee of ten dollars shall accompany the appli-
cation when filed with the division of water resources or
the division of sanitary engineering, as the case may be.
The permit fee shall be deposited in the state treasury to
the credit of the state general fund.

Sec. 7. Procedure Concerning Permits Required by
Section Five; Procedure as to Permits Incident to Reme-
dial Action; Transfer of Permits.—(a) The director of
the division of sanitary engineering shall promptly make
his determination concerning the health aspects of any proposed activity relating solely to sewage. If the plans and specifications of the proposed activity are in accord with all reasonable requirements of the department of health, the director of the division of sanitary engineering shall approve the application and issue the department of health's certificate or permit therefor. If the application is approved, the director of the division of sanitary engineering shall promptly forward his department's certificate or permit, together with the application and the information and data submitted therewith, to the division of water resources for the action of the chief thereof. Any denial of the application by the director of the division of sanitary engineering shall be governed by the provisions of chapter sixteen of this code and not by the provisions of this article.

(b) The chief and his duly authorized representatives shall conduct such investigation as is deemed necessary and proper in order to determine whether any such application should be granted or denied.

(c) The department's permit shall be issued upon such reasonable terms and conditions as the chief may direct if (1) the certificate or permit of the department of health was issued (in those cases where the director of the division of sanitary engineering was required to act as aforesaid) and/or (2) the application, together with all supporting information and data and other evidence, establishes that any and all discharges or deposits of sewage, industrial wastes, or other wastes or the effluent therefrom resulting from such proposed activity will be treated and/or the quantity and rate of flow thereof regulated or controlled to the fullest extent reasonably, economically and practicably feasible in view of modern technology and scientific methods for the treatment, regulation or control of sewage, industrial wastes, or other wastes or the effluent therefrom.

(d) An application for a permit incident to remedial action in accordance with the provisions of section eleven of this article shall be processed and decided as any other application for a permit to acquire, construct, install or
operate a new disposal system, or to extend, modify or add to a new or existing disposal system.

(e) An application for any such permit shall be acted upon by the chief (and by the director of the division of sanitary engineering of the state department of health in those cases in which such director is by this section required to act) and the department's permit (and the certificate or permit of the department of health where the proposed activity relates solely to sewage) delivered or mailed, or a copy of any order of the chief denying any such application mailed as hereinafter specified, as the case may be, to the applicant by the chief within forty-five days after the date upon which such complete application was received from the applicant by the division of sanitary engineering or within thirty days after the date upon which such complete application was received from the applicant by the division of water resources. Every effort shall be made by the division of sanitary engineering and the division of water resources to expedite all applications.

(f) When it is established that an application for a permit should be denied, the chief shall make and enter an order to that effect, which order shall specify the reasons for such denial, and shall cause a copy of such order to be served on the applicant by registered or certified mail. The chief shall also cause a notice to be served with the copy of such order, which notice shall advise the applicant of his right to appeal to the board by filing a notice of appeal, on the form prescribed by the board for such purpose, with the board, in accordance with the provisions of section fifteen of this article, within thirty days after the date upon which the applicant received the copy of such order. However, an applicant may alter the plans and specifications for the proposed activity and submit a new application for any such permit, in which event the procedure hereinbefore outlined with respect to an original application shall apply.

(g) Upon the sale of property which includes an activity for which the department's permit was granted, the permit shall be transferable to the new owner, but
the transfer shall not become effective until it is made in
the records of the division of water resources.

Sec. 8. Orders to Compel Compliance with Permits.—
After issuance of the department’s permit for any such
activity, the chief and his duly authorized representatives
may make field inspections of the work on the activity,
and, after completion thereof, may inspect the completed
activity, and, from time to time, may inspect the main-
tenance and operation of such activity.

To compel compliance with the terms and conditions
of the department’s permit for any such activity and with
the plans and specifications therefor and the plan of main-
tenance and method of operation thereof, the chief is
hereby authorized after reasonable notice to make and
enter an order revoking or suspending such permit and
directing the person to whom such permit was issued to
stop or suspend any and all work on such activity or, if
completed, to stop or suspend all discharges or deposits of
sewage, industrial wastes, or other wastes or the effluent
therefrom resulting from such activity, until such time
as the deficiencies specified in such order are fully and
completely corrected and there is full compliance with
the terms and conditions of such permit, and with the
plans and specifications for such activity and the plan
of maintenance and method of operation thereof. The
chief by such order may also direct such person to take
affirmative action to correct the deficiencies specified in
such order so there will be full compliance with the terms
and conditions of such permit and with the plans and
specifications therefor, and the plan of maintenance and
method of operation thereof.

The chief shall cause a copy of any such order to be
served by registered or certified mail or by a conservation
officer or other law enforcement officer upon the person
to whom any such permit was issued. The chief shall
also cause a notice to be served with the copy of such
order, which notice shall advise such person of his right
to appeal to the board by filing a notice of appeal, on the
form prescribed by the board for such purpose, with the
board, in accordance with the provisions of section fif-
The text is a legal document concerning the regulation of sewage, industrial wastes, and other wastes into waters of the state. It outlines procedures for obtaining permits, the terms and conditions for these permits, and the procedures for enforcing these regulations. The document also outlines the responsibilities of individuals discharging these wastes, including the requirement to file information with the division of water resources. Additionally, it details the process for the chief to issue orders to stop or prevent discharges or deposits and take remedial action based on investigations and inquiries. The document emphasizes the importance of public policy in controlling pollution and outlines the steps to be taken in enforcing these measures.
take remedial action by acquiring, constructing or installing, and using and operating a new disposal system, or extending, modifying or adding to an existing disposal system so as to control or reduce such pollution, by treating and/or regulating or controlling the quantity and rate of flow of any and all discharges or deposits of sewage, industrial wastes, or other wastes or the effluent therefrom to the fullest extent reasonably, economically and practicably feasible in view of modern technology and scientific methods for the treatment, regulation or control of sewage, industrial wastes, or other wastes or the effluent therefrom and with regard for the rights and interests of all persons concerned. The chief shall fix a reasonable time in such order by which any and all such discharges or deposits must stop or be prevented or any such remedial action must be completed. Such order shall also direct such person to apply forthwith for a permit in accordance with the provisions of sections five, six and seven of this article, in the event such person elects to comply with such order by taking such remedial action. The order shall contain the findings of fact upon which the chief determined to make and enter such order.

The chief shall cause a copy of any such order to be served by registered or certified mail or by a conservation officer or other law enforcement officer upon such person. The chief shall also cause a notice to be served with the copy of such order, which notice shall advise such person of his right to appeal to the board by filing a notice of appeal, on the form prescribed by the board for such purpose, with the board, in accordance with the provisions of section fifteen of this article, within thirty days after the date upon which such person received the copy of such order.

In the sole discretion of the chief, he may postpone issuing any such order if he feels such pollution can best be controlled or reduced by cooperative efforts with the person or persons responsible therefor.

Sec. 11. Compliance by Stopping or Preventing Discharges or Deposits or by Taking Remedial Action; Permits.—Any person upon whom any such final order of
the chief, or the board in accordance with the provisions
of section fifteen of this article, has been served shall
comply therewith by immediately stopping or preventing
any and all discharges or deposits of sewage, industrial
wastes, or other wastes or the effluent therefrom, deter-
mined to be causing such pollution, or by taking remedial
action as set forth in section ten of this article.

If such person elects to comply with any such final order
by taking remedial action, he shall forthwith apply for
a permit under and in accordance with the provisions of
sections five, six and seven of this article. No such reme-
dial action shall be taken until a permit therefor has been
issued.

Sec. 12. Duty to Proceed with Remedial Action Prompt-
ly upon Receipt of Permit; Progress Reports Required;
Finances and Funds.—When such person elects to comply
with such final order by taking remedial action, such
person shall, within thirty days after receipt of such per-
mit, take or begin appropriate steps or proceedings to
carry out such remedial action. In any such case it shall
be the duty of each individual offender, each member of
a partnership, each member of the governing body of a
municipal corporation and each member of the board of
directors or other governing body of a private corporation,
association or other legal entity whatever, upon receipt
of such permit by such individual, partnership, municipal
corporation, private corporation, association or other legal
entity whatever, to see that appropriate steps or proceed-
ings to comply with such order are taken or begun within
thirty days after such receipt. The chief may require
progress reports, not oftener than once a month, setting
forth the steps taken, the proceedings started and the
progress made toward completion of such remedial action.
All such remedial action shall be diligently prosecuted to
completion.

Failure of the governing body of a municipal corpora-
tion, or the board of directors or other governing body
of any private corporation, association or other legal
entity whatever, to provide for the financing and carry-
ing out of such remedial action, as may be necessary to
comply with said order, by appropriate ordinance or resolu-
tion within such thirty-day period, shall constitute
failure to take or begin appropriate steps or proceedings
to comply with such order. If such person be a municipal
corporation, the cost of all such remedial action as may
be necessary to comply with said order shall be paid out
of funds on hand available for such purpose, or out of the
general funds of such municipal corporation, not other-
wise appropriated, and if there be not sufficient funds on
hand or unappropriated, then the necessary funds shall be
raised by the issuance of bonds, any direct general obli-
gation bond issue to be subject to the approval of the
state sinking fund commission and the attorney general
of the state of West Virginia.

If the estimated cost of the remedial action to be taken
by a municipal corporation to comply with such final
order is such that any bond issue necessary to finance
such action would not raise the total outstanding bonded
indebtedness of such municipal corporation in excess of
the constitutional limit imposed upon such indebtedness
by the constitution of this state, then and in that event
the necessary bonds may be issued as a direct obligation
of such municipal corporation, and retired by a genera-
tax levy to be levied against all property within the limit
of such municipal corporation listed and assessed for tax-
ation. If the amount of such bonds necessary to be issued
would raise the total outstanding bonded indebtedness
of such municipal corporation above said constitutional
limitation on such indebtedness, or if such municipal cor-
poration by its governing body shall decide against the
issuance of direct obligation bonds, then such municipal
corporation shall issue revenue bonds and provide for the
retirement thereof in the same manner and subject to
the same conditions as provided for the issuance and
retirement of bonds in chapter twenty-five, acts of the
Legislature, first extraordinary session, one thousand nine
hundred thirty-three, and any amendment thereof: Pro-
vided, That the provisions of section six of the above-
mentioned act, allowing objections to be filed with the
governing body, and providing that a written protest of
thirty per cent or more of the owners of real estate shall
require a four-fifths vote of the governing body for the
issuance of said revenue bonds, shall not apply to bond
issues proposed by any municipal corporation to comply
with a final order made and entered under the authority
of this article, and such objections and submission of
written protest shall not be authorized, nor shall the same,
if made or had, operate to justify or excuse failure to
comply with such final order.

The funds made available by the issuance of either
direct obligation bonds or revenue bonds, as herein pro-
vided, shall constitute a "sanitary fund," and shall be used
for no other purpose than for carrying out such final order;
no public money so raised shall be expended by any mu-
nicipal corporation for any purpose enumerated in this
article, unless such expenditure and the amount thereof
have been approved by the board. The acquisition, con-
struction or installation, use and operation, repair, modi-
fication, alteration, extension, equipment, custody and
maintenance of any disposal system by any municipal
 corporation, as herein provided, and the rights, powers
and duties with respect thereto, of such municipal cor-
poration and the respective officers and departments
thereof, whether the same shall be financed by the issu-
ance of revenue or direct obligation bonds, shall be gov-
erned by the provisions of said chapter twenty-five, acts
of the Legislature, first extraordinary session, one thou-
sand nine hundred thirty-three, and any amendments
thereof.

Sec. 13. Time Extensions.—The chief shall have the
authority, in his sole discretion, to extend the time fixed
in any final order made and entered by him, or the board
in accordance with the provisions of section fifteen of
this article, within which any person electing to comply
with such order by taking remedial action must complete
such action, upon written petition filed with him prior to
the time fixed in such order, when it shall appear that a
good faith effort to comply with said order is being made,
and that it shall be impossible for such person to com-
plete such remedial action within the time so fixed:
Provided, That when it shall appear from such petition
that due to wartime or other governmental restrictions with respect to labor or material, or both, such compliance with any such order would be impossible or would place an undue burden upon such person, the chief shall stay execution of any such order until such time as it may satisfactorily appear that such wartime or other restrictions no longer exist. The chief may grant as many such extensions as he finds to be warranted by the facts and circumstances involved in any particular case.

Sec. 14. Control by State as to Pollution; Continuing Jurisdiction.—No right to continue existing pollution of any of the waters of the state shall exist nor shall such right be or be deemed to have been acquired by virtue of past or future pollution by any person. The right and control of the state in and over all waters of the state are hereby expressly reserved and reaffirmed. It is recognized that with the passage of time, additional efforts may have to be made by all persons toward control and reduction of the pollution of the waters of the state, irrespective of the fact that such persons may have previously complied with all orders of the chief or board. However, it is also recognized that there should be continuity and stability respecting pollution control measures taken in cooperation with, and with the approval of, the chief, or pursuant to orders of the chief or board. Therefore, and notwithstanding any provision in this section to the contrary, where a person is complying with the terms and conditions of a permit granted pursuant to the provisions of section seven of this article or where a person has completed remedial action pursuant to an order of the chief or board, additional efforts may not be required until such time as there has been a substantial and material change in the facts and circumstances of the situation to which the permit or remedial action pertains.

PART V. APPEAL AND REVIEW PROCEDURES.

Sec. 15. Appeal to Water Resources Board.—(a) Any person adversely affected by an order made and entered by the chief in accordance with the provisions of this article, or aggrieved by failure or refusal of the chief to
act within the time required by section seven of this article on an application for a permit or aggrieved by the terms and conditions of a permit granted under the provisions of this article, may appeal to the water resources board for an order vacating or modifying such order, or for such order, action or terms and conditions as the chief should have entered, taken or imposed. The person so appealing shall be known as the appellant and the chief shall be known as the appellee.

(b) Such appeal shall be perfected by filing a notice of appeal, on the form prescribed by the board for such purpose, with the board within thirty days after the date upon which the appellant received the copy of such order, or received such permit, as the case may be. The filing of the notice of appeal shall stay or suspend execution of any order appealed from. The notice of appeal shall set forth the order or terms and conditions complained of and the grounds upon which the appeal is based. A copy of the notice of appeal shall be filed by the board with the chief within three days after the notice of appeal is filed with the board.

(c) Within seven days after receipt of his copy of the notice of appeal, the chief shall prepare and certify to the board a complete record of the proceedings out of which the appeal arises, including all documents and correspondence in the chief's file relating to the matter in question. With the consent of the board and upon such terms and conditions as the board may prescribe, any persons affected by any such activity or by such alleged pollution may by petition intervene as a party appellant or appellee. The board shall hear the appeal de novo, and evidence may be offered on behalf of the appellant and appellee, and, with the consent of the board, by any intervenors.

(d) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing on appeal authorized by this section and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section, with the following modifications or exceptions:
(1) Unless the board directs otherwise, the appeal hearing shall be held in the city of Charleston, Kanawha county, West Virginia; and

(2) In accordance with the provisions of section one, article five of said chapter twenty-nine-a, all of the testimony at any such hearing shall be recorded by stenographic notes and characters or by mechanical means. Such reported testimony shall in every appeal hearing under this article be transcribed.

(e) Any such appeal hearing shall be conducted by a quorum of the board, but the parties may by stipulation agree to take evidence before a hearing examiner employed by the board. Upon request of any party to the appeal, the evidence taken before a hearing examiner shall be taken in the county in which the activity is proposed to take place, or in which the activity is situate or would be situate upon completion thereof, or in which the pollution is alleged to have occurred or to be taking place, as the case may be. For the purpose of conducting such appeal hearing, any member of the board and the secretary thereof shall have the power and authority to issue subpoenas and subpoenas duces tecum in the name of the board, in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of an appeal hearing hereunder.

(f) Any such hearing shall be held within twenty days after the date upon which the board received the timely notice of appeal, unless there is a postponement or continuance. The board may postpone or continue any hearing upon its own motion, or upon application of the appellant, the appellee or any intervenors for good cause shown. The chief shall be represented at any such hearing by the attorney general or his assistants. At any such hearing the appellant and any intervenor may represent
himself or be represented by an attorney at law admitted
to practice before any circuit court of this state.

(g) After such hearing and consideration of all of the
testimony, evidence and record in the case, the board
shall make and enter an order affirming, modifying or
vacating the order of the chief, or shall make and enter
such order as the chief should have entered, or shall make
and enter an order approving or modifying the terms and
conditions of any permit issued. In determining its course
of action, the board shall take into consideration the fac-
tors which the chief had to consider in making his order,
and fixing the terms and conditions of such permit, as set
forth in sections seven, eight or ten of this article, as the
case may be.

(h) Such order shall be accompanied by findings of
fact and conclusions of law as specified in section three,
article five, chapter twenty-nine-a of this code, and a copy
of such order and accompanying findings and conclusions
shall be served upon the appellant, and any intervenors,
and their attorneys of record, if any, and upon the ap-
pellee in person or by registered or certified mail.

(i) The board shall also cause a notice to be served
with the copy of such order, which notice shall advise the
appellant, the appellee and any intervenors of their right
to judicial review, in accordance with the provisions of
section sixteen of this article. The order of the board shall
be final unless vacated or modified upon judicial review
thereof in accordance with the provisions of section six-
teen of this article.

Sec. 16. Judicial Review.—(a) Any person or the chief
adversely affected by a final order made and entered by
the board after such appeal hearing, held in accordance
with the provisions of section fifteen of this article, is
entitled to judicial review thereof. All of the pertinent
provisions of section four, article five, chapter twenty-
nine-a of this code shall apply to and govern such review
with like effect as if the provisions of said section four
were set forth in extenso in this section, with the follow-
ing modifications or exceptions:

(1) As to cases involving an order denying an appli-
cation for a permit, or approving or modifying the terms
and conditions of a permit, the petition shall be filed,
within the time specified in said section four, in the cir-
cuit court of the county in which such extension or modi-
fication of, or addition to, such industrial or commercial
establishment, or such new outlet or the enlargement of,
or addition to, the load of an existing outlet, or such ac-
quisation, construction, installation or operation of a new
disposal system or the extension or modification of, or
addition to, a new or existing disposal system, is proposed
to take place;
(2) As to cases involving an order revoking or sus-
pending a permit and directing any and all work on any
such activity to stop or suspending such work, or directing
all discharges or deposits of sewage, industrial wastes, or
other wastes or the effluent therefrom resulting from any
such activity to stop or suspending such discharges or
deposits, or directing that affirmative action be taken
to correct alleged and specified deficiencies concerning
any such activity, the petition shall be filed, within the
time specified in said section four, in the circuit court of
the county in which such extension or modification of,
or addition to, such industrial or commercial establish-
ment, or such new outlet or the enlargement of, or addi-
tion to, the load of an existing outlet, or such acquisition,
construction, installation or operation of a new disposal
system or the extension or modification of, or addition to,
a new or existing disposal system, is situate or would be
situate upon completion thereof; and
(3) As to cases involving an order directing that any
and all discharges or deposits of sewage, industrial wastes,
or other wastes or the effluent therefrom determined to
be causing pollution be stopped or prevented or else that
remedial action be taken, the petition shall be filed, within
the time specified in said section four, in the circuit court
of the county in which the pollution is alleged to have oc-
curred or to be taking place.
(b) The judgment of the circuit court shall be final
unless reversed, vacated or modified on appeal to the su-
preme court of appeals in accordance with the provisions
of section one, article six, chapter twenty-nine-a of this
code, except that notwithstanding the provisions of said
section one the petition seeking such review must be filed
with said supreme court of appeals within ninety days
from the date of entry of the judgment of the circuit court.

(c) Legal counsel and services for the chief in all
appeal proceedings in the circuit courts and in the su­
preme court of appeals of this state shall be provided by
the attorney general or his assistants and in appeal pro­
cedings in the circuit courts by the prosecuting attorneys
of the several counties as well, all without additional
compensation, or the board or chief, with the written
approval of the attorney general may employ special
counsel to represent the board or chief in a particular
proceeding.

PART VI. ACTIONS.

Sec. 17. Actions to Abate Nuisances; Injunctive Relief.
— (a) Whether any violation of the provisions of this
article or any final order of the chief or the board shall
result in prosecution or conviction or not, any such vio­
lation shall be deemed a nuisance which may be abated
upon application by the chief to the circuit court of the
county in which such nuisance or any part thereof shall
exist, or to the judge thereof in vacation. Upon applica­
tion by the chief, the circuit courts of this state may by
mandatory or prohibitive injunction compel compliance
with all final orders of such chief or board. Any applica­
tion for an injunction to compel compliance with any
final order of the chief or board shall be made to the
circuit court of the county in which the activity to which
the order relates is proposed to take place, or in which
the activity to which the order relates is situate or would
be situate upon completion thereof, or in which the pol­
lution to which the order relates is alleged to have oc­
curred or to be taking place, as the case may be, or to the
judge thereof in vacation. Upon application by the chief
to the circuit court of the county in which a municipal
corporation is located, or in which any person resides or
does business, or to the judge thereof in vacation, such
court may by injunction require the performance of any
duty imposed upon such municipal corporation or person
by the provisions of this article. The court may issue a
temporary injunction in any case pending a decision on
the merits of any application filed.

In cases of aggravated pollution where irreparable
damage will result from any delay incident to the adminis-
trative procedures set forth in this article, the chief, with
the consent of the director, may forthwith apply to the
circuit court of the county in which the pollution is taking
place for a temporary injunction. Such court may issue
a temporary injunction pending final disposition of the
case by the chief or the board, in the event an appeal is
taken to the board.

The judgment of the circuit court upon any application
permitted by the provisions of this section shall be final
unless reversed, vacated or modified on appeal to the
supreme court of appeals. Any such appeal shall be
sought in the manner provided by law for appeals from
circuit courts in other civil cases, except that the petition
seeking such review must be filed with said supreme court
of appeals within ninety days from the date of entry of
the judgment of the circuit court.

The chief shall be represented in all such proceedings
by the attorney general or his assistants and in such pro-
ceedings in the circuit courts by the prosecuting attorneys
of the several counties as well, all without additional
compensation.

Sec. 18. Priority of Actions.—All applications under
section seventeen of this article and all proceedings for
judicial review under section sixteen of this article shall
take priority on the docket of the circuit court in which
pending, and shall take precedence over all other civil
cases. Where such applications and proceedings for ju-
dicial review are pending in the same court at the same
time, such applications shall take priority on the docket
and shall take precedence over proceedings for judicial
review.

PART VII. VIOLATIONS AND PENALTIES.

Sec. 19. Violations; Criminal Penalties.—Any person
who fails or refuses to discharge any duty imposed upon
3 him by this article or by any final order of the chief or
4 board, or who fails or refuses to apply for and obtain a
5 permit as required by the provisions of this article, shall
6 be guilty of a misdemeanor, and, upon conviction thereof,
7 shall be punished for a first offense by a fine of not less
8 than twenty-five dollars nor more than one hundred dol-
9 lars, and for a second offense by a fine of not less than
10 two hundred dollars nor more than five hundred dollars,
11 and for a third and each subsequent offense by a fine of
12 not less than five hundred dollars nor more than one
13 thousand dollars or by imprisonment for a period not to
14 exceed six months, or in the discretion of the court by
15 both such fine and imprisonment.

Sec. 19-a. Civil Liability.—If any loss of game fish or
2 aquatic life results from a person’s or persons’ failure or
3 refusal to discharge any duty imposed upon him by this
4 article, the West Virginia department of natural resources
5 shall have a cause of action on behalf of the state of West
6 Virginia to recover from such person or persons causing
7 such loss a sum equal to the cost of replacing such game
8 fish or aquatic life.

Sec. 20. Exceptions as to Criminal Liabilities.—The
criminal liabilities imposed by section nineteen of this
article shall not be construed to include any violation re-
sulting from accident or caused by an act of God, war,
strike, riot or other catastrophe as to which negligence or
wilful misconduct on the part of such person was not the
proximate cause.

PART VIII. SHORT TITLE; CONSTRUCTION AND
SEVERABILITY.

Sec. 21. Short Title.—This article may be known and
cited as the “Water Pollution Control Act.”

Sec. 22. Article for Benefit of State Only.—The provi-
sions of this article inure solely to and are for the benefit
of the people generally of the state of West Virginia, and
this article is not intended to in any way create new, or
enlarge existing rights of riparian owners or others. A
final order of the chief or the board, the effect of which
is to find that pollution exists, or that any person is caus-
ing pollution, or any other final order, or any violation
of any of the provisions of this article shall give rise to
no presumptions of law or findings of fact inuring to or
for the benefit of persons other than the state of West
Virginia.

Sec. 23. Conflicting Provisions; Department of Health.
-In the event of any inconsistency or conflict between
any provision of this article and any provision of this
chapter, the provisions of this article shall control. This
article shall under no circumstances be construed as
limiting or repealing the powers, authority or duties of
the state department of health or the director thereof as
provided in chapter sixteen of this code or otherwise by
law.

Sec. 24. Severability of Provisions.—If any provision
of this article or the application thereof to any person or
circumstance is held invalid, such invalidity shall not
affect other provisions or applications of the article which
can be given effect without the invalid provision or its
application, and to this end the provisions of this article
are declared to be severable.

Article 7. Law Enforcement, Procedures and Penalties.
Section

Section 4. Powers and Duties of Conservation Officers.
—Conservation officers and all other persons authorized
to enforce the provisions of this chapter shall be under
the supervision and direction of the director in the per-
formance of their duties as herein provided. The au-
theory, powers and duties of the conservation officers
shall be state-wide and they shall have authority to:
(1) Arrest on sight, without warrant or other court
process, any person or persons detected by them in the
violation of any of the provisions of this chapter, but no
such arrests shall be made where any form of adminis-
trative procedure is prescribed by this chapter for the
enforcement of any of the particular provisions contained
herein;
(2) Carry such arms and weapons as may be prescribed by the director in the course and performance of their duties, upon giving the bond required by the provisions of section five, article seven, chapter sixty-one of this code, but no license or other authorization shall be required of such officers for this privilege;

(3) Search and examine, in the manner provided by law, any boat, vehicle, automobile, conveyance, express or railroad car, fish box, fish bucket or creel, game bag or game coat, or any other place in which hunting and fishing paraphernalia, wild animals, wild birds, fish, amphibians or other forms of aquatic life could be concealed, packed or conveyed whenever they have reason to believe that they would thereby secure or discover evidence of the violation of any provision of this chapter;

(4) Execute and serve any search warrant, notice or any process of law issued under the authority of this chapter or any law relating to wildlife, forests, and all other natural resources, by a justice of the peace or any court having jurisdiction thereof, or copies of orders made and entered by the chief of the division of water resources, or, without fee, any subpoena or subpoena duces tecum issued in accordance with the provisions of article five-a of this chapter, in the same manner, with the same authority, and with the same legal effect, as any constable or sheriff can serve or execute such warrant, notice or process;

(5) Require the operator of any motor vehicle or other conveyance, on or about the public highways or roadways, or in or near the fields and streams of this state, to stop for the purpose of allowing such officers to conduct game-kill surveys;

(6) Summon aid in making arrests or seizures or in executing any warrants, notices or processes, and they shall have the same rights and powers as sheriffs have in their respective counties in so doing;

(7) Enter private lands or waters within the state while engaged in the performance of their official duties hereunder: Provided, That in connection with all surveys, examinations, inspections, inquiries, investigations and
55  studies needed in the gathering of facts concerning water
56  resources and their use or the pollution thereof under
57  article five or article five-a of this chapter, such conserva-
58  tion officers and all other persons authorized to enforce
59  the provisions of this chapter, shall act pursuant to and
60  under the direction of the chief of the division of water
61  resources or the state water resources board, and such
62  officers and other persons shall be subject to the provisions
63  of subparagraph (c) of section five, article five, and sub-
64  paragraph (d) of section three, article five-a of this chap-
65  ter; and
66  (8) Do all things necessary to carry into effect the pro-
67  visions of this chapter.

CHAPTER 21

(House Bill No. 8—By Mr. Speaker, Mr. Singleton, and
Mr. Board)

[Passed February 3, 1964: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-seven, article
two, chapter fifteen of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to the
death, disability and retirement fund of the department
definition of public safety; providing for fees to which members of
said department shall be entitled, and may claim on ac-
count of said department of public safety for services ren-
dered by such members in criminal cases and requiring
such fees to be deposited in and credited to said death,
disability and retirement fund; and continuing said death,
disability and retirement fund and the retirement board
and functions thereof heretofore established.

Be it enacted by the Legislature of West Virginia:

That section twenty-seven, article two, 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 27. Death, Disability and Retirement Fund; Fees to Which Members Entitled; Fees to Be Deposited in Said Fund; Retirement Board.—There shall be continued the death, disability and retirement fund heretofore created for the benefit of members of the department of public safety, and any dependent of a retired or deceased member thereof. Into such fund shall be paid such amounts as have heretofore been collected by the superintendent of the department of public safety on account of fees for arrest, court attendance and mileage, seizures, rewards, or from any other source permitted by law. For official services rendered in any criminal case, a member of the department of public safety shall be entitled to receive the same fees as a constable is entitled to receive for the same services pursuant to section twelve, article seventeen, chapter fifty of this code, when such fees are actually paid by or for the defendant in such criminal case, pursuant to the order made and entered therein, to the justice of the peace, the clerk of the court, or other officer for the services of such member: Provided, That (1) such fees may be claimed and received by the member only for the account of said department; (2) all fees collected by a member pursuant to this section shall in every instance be remitted by such member to the superintendent of said department and deposited in the state treasury to the credit of said death, disability and retirement fund; and, (3) the superintendent of said department shall promulgate regulations to assure disposition, in the manner herein provided, of all fees received by members pursuant to this section: Provided, however, That under no circumstances shall any member of the department of public safety be entitled to any mileage fees for services rendered in criminal cases and under no circumstances shall any county court or municipal corporation be required to pay any fees or costs which the county court would be required to pay were the services rendered by a constable. There shall be paid into said death, dis-
ability and retirement fund all amounts arising in the
future from the above-named sources and any other
sources that may be designated by the superintendent of
said department and permitted by law, except that no
part of any fine shall be paid into said death, disability
and retirement fund.
There shall be deducted from the monthly payroll of
each member of the department of public safety and paid
into such fund six per cent of the amount of his salary,
and an additional twelve per cent of the monthly salary
of each member of said department shall be paid by the
state of West Virginia monthly into such fund out of
the biennial appropriation for said department. All
moneys payable into such fund shall be deposited in the
state treasury, and the treasurer and auditor shall keep
a separate account thereof on their respective books.
The death, disability and retirement fund shall be ad-
ministered by a retirement board which shall consist of
the attorney general, state treasurer, the superintendent
and two members in active service of the department of
public safety: Provided, That members of said retire-
ment board shall not be entitled to receive any compen-
sation in addition to the salary of their respective offices
for any service rendered as a member of said retirement
board: Provided further, That the superintendent may
pay out of funds appropriated for operation of said de-
partment the reasonable expenses of members of said
board necessarily incurred in connection with dispatch
of any business properly before such board. The two
members of said department shall be elected to member-
ship on the retirement board by vote of the members
of the department of public safety; such election to be
held on the first Tuesday in June next following the pas-
sage of this act and on the first Tuesday in June each two
years thereafter. The attorney general, state treasurer
and the superintendent of the department of public safety
shall promulgate any and all necessary rules and regula-
tions for holding in a fair and impartial manner the elec-
tion on the first Tuesday in June next following the
passage of this act and thereafter the retirement board
consisting of the attorney general, state treasurer, super-
intendent and the two duly elected members of said department shall have authority to promulgate and, from
time to time, revise rules and regulations for holding
all subsequent elections in a fair and impartial manner.
All elections shall be held under the direction of the
superintendent of said department in accordance with
said rules and regulations. The members of the depart-
ment chosen to serve on said retirement board shall hold
office for a period of two years commencing on the first
day of July next following the date of such election.
When any member elected to the retirement board shall
die, resign from the board, resign or be discharged from
service in the department, make application for retire-
ment, be retired, or become disabled, the office of such
member of the retirement board shall be declared vacant
by the superintendent of said department, and said super-
intendent, to fill such vacancy, shall appoint the mem-
ber in active service of said department who as an un-
successful candidate at the preceding election of members
to said retirement board received the greatest number of
votes. No member of the retirement board shall par-
ticipate in any hearing at which his own petition for
retirement or the petition of any member of said depart-
ment who is related to him by blood or marriage shall be
presented for consideration.

At its first meeting following each election of members
to the retirement board said board shall elect one of its
members to serve as chairman and a second member to
serve as secretary thereof. The retirement board shall
have the power to make rules and regulations, not in-
consistent with the provisions hereof, governing pro-
cedure and order and manner of business by and before
such board. The retirement board shall have the power
to make awards and to revise and terminate awards
previously made for such times and under such terms
and conditions as are hereinafter provided. The votes
of a majority of the five members of the board shall be
necessary to decision of any matter by the board. Decisions
made by the board shall be supreme and final and there
shall be no appeal therefrom.

It shall be the duty of the retirement board on or be-
fore the first day of July of each year to cause all future
awards from such fund to be valued and, to the extent
that moneys shall be available, reserves based on sound
actuarial principles for payment thereof to be carried on
the funds account as a liability against the reserve fund.
The board shall have authority to employ an actuary for
such purpose. The board shall cause a system of account-
ing to be installed and maintained to reflect currently and
truly all transactions or developments pertaining to age
of members and eligible dependents surviving deceased
members, periods of service and aggregate earnings of
all members eligible to participate in said fund and any
other matter relating to maintenance of said fund or ad-
ministration thereof, and each year to cause to be made
and submitted to each member of said department a state-
ment of the condition of said fund. Costs and expenses
incurred in making actuarial studies, audits and installa-
tions and maintenance of such accounting system shall
be paid by the superintendent from funds appropriated
for operation of the department of public safety.

All moneys paid into and accumulated in said death,
disability and retirement fund, except such amounts as
shall be designated or set aside by the retirement board
for payments of death, disability and retirement benefits
and awards, shall be invested by the state board of public
works in bonds of the government of the United States,
the state of West Virginia, or any political subdivision
thereof selected or approved by the retirement board.

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CHAPTER 22

(House Bill No. 14—By Mr. Speaker, Mr. Singleton,
and Mr. Sawyers)

[Passed January 22, 1964: in effect ninety days from passage. Approved by the
Governor.]
issuance and sale of state bonds for the building and construction of state roads and highways, limiting the amount of bonds that may be issued and sold in any fiscal year, requiring the Legislature to provide as directed by the amendment for the collection of an annual state tax to pay the interest on and principal of such bonds, and revoking as of January first, one thousand nine hundred sixty-five, the authority to issue and sell and have outstanding additional bonds granted by the amendment to the constitution proposed by Senate Joint Resolution No. fifteen, adopted February fifteenth, one thousand nine hundred nineteen, and afterwards ratified by a vote of the people.

Be it enacted by the Legislature of West Virginia:

Better Roads Amendment

Section 1. Submitting “Better Roads Amendment” to the state constitution.

1. Amendment to be known as the “Better Roads Amendment.”
2. Form of ballot; election.
3. Certificate of election commissioners; canvass of vote; certifying result.
4. Proclamation of result of election by governor.
5. Publication of proposed amendment by governor.

Section 1. Submitting “Better Roads 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 sixty-four, which proposed amendment is as follows:

BETTER ROADS AMENDMENT

The Legislature shall have power to authorize the issuing and selling of state bonds not exceeding in the aggregate two hundred million dollars. The proceeds of said bonds hereby authorized to be issued and sold shall be used and appropriated solely for the building and construction of state roads and highways provided for by this constitution and the laws enacted thereunder. Such bonds may be issued and sold in amounts not to exceed twenty million dollars in any fiscal year. When a bond issue as aforesaid is authorized, the Legislature shall, at the same time provide for the collection of an annual
state tax sufficient to pay as it may accrue the interest on
such bonds and the principal thereof within and not ex-
ceeding twenty-five years. Such tax shall be levied in
any year only to the extent that the moneys in the state
road fund irrevocably set aside and appropriated for and
applied to the payment of the interest on and principal
of said bonds becoming due and payable in such year are
insufficient therefor.

The authority to issue and sell and have outstanding
additional bonds granted by the amendment to the con-
stitution proposed by Senate Joint Resolution No. 15,
adopted February 15, 1919, and afterwards ratified by a
vote of the people, is hereby revoked as of January 1, 1965,
but said amendment shall in all other respects remain in
full force and effect.

Sec. 2. Amendment to Be Known as the “Better Roads
Amendment.”—For convenience in referring to said pro-
posed amendment, and in the preparation of the form of
the ballot hereinafter provided for, said proposed amend-
ment is hereby designated as the “Better Roads Amend-
ment.”

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 sixty-four, the board of ballot commissioners of
each county is hereby required to place upon, and at the
foot of, the official ballot to be voted upon at that election,
the following:

Ballot on Better Roads Amendment.

☐ For ratification of Better Roads Amendment.
☐ Against ratification of Better Roads Amendment.

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

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

“We, the undersigned, who acted as commissioners (or canvassers, as the case may be) of the election held at Precinct No. ......, in the district of ......, in the county of ......, on the ...... day of ......, one thousand nine hundred sixty-four, upon the question of the ratification or rejection of the proposed constitutional amendment, do hereby certify that the result of said election is as follows:

“For ratification of Better Roads Amendment ................ votes.

“Against ratification of Better Roads Amendment ................ votes.

“Given under our hands this ...... day of ......, one thousand nine hundred sixty-four.”

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

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

"We, the board of canvassers of the county of __________, having carefully and impartially examined the returns of the election held in said county, in each district thereof, on the __________ day of November, one thousand nine hundred sixty-four, do certify that the result of the election in said county, on the question of the ratification or rejection of the proposed amendment is as follows:

"For ratification of Better Roads Amendment __________ votes.

"Against ratification of Better Roads Amendment __________ votes.

"Given under our hands this __________ day of __________, one thousand nine hundred sixty-four." 

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

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

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

CHAPTER 23

( House Bill No. 41—Originating in the House
 Committee on Finance)

[Passed February 6, 1964; in effect ninety days from passage. Approved by the
 Governor.]

AN ACT to amend and reenact section two, article seven, chap­
ter six of the code of West Virginia, one thousand nine hun­
dred thirty-one, as amended, relating to salaries of certain state officers.

Be it enacted by the Legislature of West Virginia:

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

Article 7. Compensation and Allowances.

Section 2. Salaries of Certain State Officers.—Effective on and after the first Monday after the second Wed­nesday in January, one thousand nine hundred sixty-five,
the salary of the governor shall be twenty-five thousand dollars per year.

The salary of the attorney general shall be eighteen thousand five hundred dollars per year; the salary of the auditor and superintendent of free schools shall each be
eighteen thousand dollars per year; the salary of the state
treasurer shall be seventeen thousand five hundred dol-
ars per year; and the salary of the secretary of state and
the commissioner of agriculture shall each be seventeen
thousand dollars per year.

The salary of each of the judges of the supreme court
of appeals shall be twenty-two thousand five hundred
dollars per year.

Such salaries shall be paid out of the state treasury.

CHAPTER 24

(Senate Bill No. 35—By Mr. McCourt)

[Passed February 6, 1964: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-e, article thirteen,
chapter eleven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to business
and occupation tax on the business of contracting.

Be it enacted by the Legislature of West Virginia:

That section two-e, article thirteen, 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 2-e. Business of contracting.

Section 2-e. Business of Contracting.—Upon every per-
son engaging or continuing within this state in the busi-
ness of contracting, the tax shall be equal to two and six-
tenths per cent of the gross income of the business:
Provided, That said tax shall be reduced to two per cent
of the gross income of the business derived from contracts
entered into on or after the first day of July, one thousand
ine hundred sixty-five.
AN ACT to amend and reenact section three-a, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to additional consumers sales tax.

Be it enacted by the Legislature of West Virginia:

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

Article 15. Consumers Sales Tax.

Section 3-a. Additional consumers sales tax.

Section 3-a. Additional Consumers Sales Tax.—For the purpose of providing additional revenue for the state general revenue fund and for the privilege of selling tangible personal property and dispensing certain selected services defined in section eight of this article, the vendor, in addition to the tax imposed by section three of this article, shall collect from the purchaser the tax provided by this section, and shall pay the amount of such tax to the tax commissioner in accordance with the provisions of this article.

The amount of the tax shall be computed as follows:

On each sale, the additional sum of one cent on each one dollar of monetary consideration, or fraction thereof, in excess of one dollar.

Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition, payment, collection, remission and assessment of the consumers sales tax imposed by section three of said article shall be applicable to the levy, imposition, payment, collection, remission and assessment of such additional tax.

Notwithstanding the provisions of section thirty of this
article, all moneys received by the tax commissioner from the additional tax imposed by this section shall be paid by him into the state fund, general revenue, to be expended in whatever manner provided by law.

It is the intent of the Legislature in imposing this additional tax to provide funds to the governor, the state road commissioner and the state department of natural resources for the emergency relief of unemployment throughout the state of West Virginia.

The provisions of this section shall expire June thirtieth, one thousand nine hundred sixty-five.

AN ACT to amend and reenact section two-a, article fifteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to an additional use tax.

Be it enacted by the Legislature of West Virginia:

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

Article 15-a. Use Tax.

Section 2-a. Additional use tax.

Section 2-a. Additional Use Tax.—For the purpose of providing additional revenue for the state fund, general revenue, there is hereby imposed, other than in this section two-a to the contrary, an additional excise (use) tax in the same form, manner and extent as in section two of this article provided; said additional excise (use) tax is imposed at the rate of one per cent of the purchase price of such property, with the first one dollar of such pur-
chase price being exempt for the purpose of computing
the additional excise tax imposed by this section two-a.

Except as otherwise provided in this section, all pro-
visions of this article relating to the levy, imposition,
exemptions, payment, collection, remission and assess-
ment of the excise tax imposed by section two of this
article shall be applicable to the levy, imposition, exempt-
ions, payment, collection, remission and assessment of
such additional tax as imposed by this section two-a.

Notwithstanding the provisions of section twenty-six
of this article, all moneys received from the additional
tax imposed by this section shall be paid into the state
fund, general revenue, to be expended in whatever man-
ner provided by law.

The provisions of this section shall expire June thirtieth,
one thousand nine hundred sixty-five.

CHAPTER 27
(Com. Sub. for Senate Bill No. 5—Originating in the Senate
Committee on the Judiciary)

(Passed January 28, 1964; in effect from passage. Approved by the Governor.)

AN ACT to amend chapter twenty-one-a of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new article, designated ar-
ticle two-b, relating to the acceptance by the commissioner
of the department of employment security of granted funds
provided by the United States department of labor, bu-
reau of employment security, and empowering the com-
missioner to approve and the state auditor to make peri-
odic deductions from salaries of regular employees thereof
who agree thereto; said granted funds and the deductions
from salaries to be applied to the payment of insurance
premiums on policies under group insurance plans in
favor of the regular employees of the department of em-
ployment security.
Be it enacted by the Legislature of West Virginia:

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

Article 2-b. Group Insurance Plans for Regular Employees.

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

Sec. 2. Granted Funds by United States Department of Labor, Bureau of Employment Security.—The group insurance plans so authorized to be established shall be subject to the following terms and conditions:

The commissioner is hereby authorized and empowered to accept on behalf of the regular employees of the department of employment security, who in writing agree to participate in any plan of group insurance, granted funds provided by the United States department of labor,
bureau of employment security, to pay the agency's share of the premium cost of said group policy or policies. The state of West Virginia shall not pay, or be liable for the payment of, any portion of said premiums for such group insurance.

Sec. 3. Terms, Conditions and Administration Generally.—The provisions and terms of any such group plan or plans of insurance shall comply in all respects with the conditions and requirements of the United States department of labor, bureau of employment security, and shall be approved in writing by the insurance commissioner of the state of West Virginia as to form, rate and benefits.

Sec. 4. Payroll Deductions.—(a) Whenever the above-described regular employees shall indicate in writing that they have subscribed to any of the aforesaid insurance plans on a group basis, the commissioner of the department of employment security is hereby authorized and empowered to approve periodic premium deductions from the salary payments due such employees as specified in a written assignment furnished the commissioner by each such employee subscribing to a group insurance plan, which deductions shall be made by the auditor of the state of West Virginia.

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

(c) When a participating employee shall retire from his employment, he may, if he so elects and the insurance carrier or carriers agree, remain a member of the group plan by paying the entire premium for the coverage involved.
Sec. 5. Custodian; Disbursements.—The state treasurer shall be custodian of the funds under the aforesaid group insurance plans, and disbursements from the funds to pay all premiums shall be made only upon warrants signed by the state auditor and the state treasurer.

CHAPTER 28

(House Bill No. 46—By Mr. Ford and Mr. Buch)

[Passed February 1, 1964; in effect July 1, 1964. Approved by the Governor.]

AN ACT to amend article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, said chapter forty-six, known and designated as the uniform commercial code, having been enacted by chapter one hundred ninety-three, acts of the Legislature, regular session, one thousand nine hundred sixty-three, by adding to said article nine a new section, designated section nine-four hundred seven, requiring a filing officer upon request to note certain filing information upon a copy of the statement or statements filed; requiring the secretary of state upon request to issue his certificate showing whether there is on file in his office on a specified date and hour any presently effective financing statement naming a particular debtor and any statement of assignment thereof, and if so, certain information; and prescribing fees for certain services of filing officers under said uniform commercial code.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, said chapter forty-six, having been enacted by chapter one hundred ninety-three, acts of the Legislature, regular session, one thousand nine hundred sixty-three, be amended by adding to said article nine a new section, designated section nine-four hundred seven, to read as follows:

Section 9-407. Information from filing officer.

Section 9-407. Information from Filing Officer.—(1)
If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the secretary of state shall issue his certificate showing whether there is on file in his office on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be two dollars plus fifty cents for each financing statement and for each statement of assignment reported therein. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of fifty cents per page.

CHAPTER 29

(House Bill No. 44—By Mr. Moyers)

(Passed February 1, 1964; in effect from passage. Approved by the Governor.)

AN ACT to authorize and empower the town of Burnsville, a municipal corporation, to transfer a certain parcel of land, owned by said municipal corporation, to the board of education of Braxton county.

Be it enacted by the Legislature of West Virginia:

Section 1. Town of Burnsville authorized to transfer certain municipally-owned real property to the board of education of Braxton County.
Section 1. Town of Burnsville Authorized to Transfer Certain Municipally-Owned Real Property to the Board of Education of Braxton County.—The town of Burnsville, a municipal corporation, Braxton county, is hereby authorized and empowered to sell and transfer to the board of education of Braxton county a certain tract of real property owned by said town, consisting of that portion of Rochester avenue between Montrose avenue and Front street in Martin addition to said town, having been dedicated to said town and said dedication being of record in the map and plat book in the office of the clerk of the county court of Braxton county.

The section of Rochester street referred to herein is situated within the limits of the athletic field of Burnsville high school and has never been opened to public use. The sale or transfer shall be for a nominal consideration.

CHAPTER 30

(House Bill No. 45—By Mr. Moyers)

(Passed February 1, 1964; in effect from passage. Approved by the Governor.)

AN ACT to authorize and empower the town of Gassaway, a municipal corporation, to transfer a certain parcel of land, owned by said municipal corporation, to the United States of America.

Be it enacted by the Legislature of West Virginia:

Section 1. Town of Gassaway authorized to transfer certain municipally-owned real property to the United States of America.

Section 1. Town of Gassaway Authorized to Transfer Certain Municipally-Owned Real Property to the United States of America.—The town of Gassaway, a municipal corporation, Braxton county, is hereby authorized and empowered to sell and transfer to the United States of America all or any part of a certain tract or parcel of real property owned by said town, located in block eight of
8 the town of Gassaway, fronting approximately two hundred thirty feet on Elk street and extending back approximately one hundred forty feet on Fourth street. The consideration for such sale or transfer shall be as negotiated between the grantor and grantee.

CHAPTER 31

(House Bill No. 26—By Mr. White)

AN ACT to amend and reenact section four, chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred nine, as last amended and reenacted by chapter one hundred seventy-five, acts of the Legislature, regular session, one thousand nine hundred fifty-seven, relating to the salary of the judge of the criminal court of Harrison County.

Be it enacted by the Legislature of West Virginia:

That section four, chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred nine, as last amended and reenacted by chapter one hundred seventy-five, acts of the Legislature, regular session, one thousand nine hundred fifty-seven, be amended and reenacted to read as follows:

Section 4. Salary of judge.

Section 4. Salary of Judge.—The judge of the criminal court of Harrison county, West Virginia, shall from and after the first day of January, one thousand nine hundred sixty-nine, receive for his services a salary of ten thousand five hundred dollars per year; said amount to be paid in twelve equal monthly installments from year to year by the county court of said county, out of funds of said county, in the manner provided by statute. The salary of said judge shall continue as provided in section
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10 four, chapter one hundred seventy-five, acts of the Legis-
11 lature, regular session, one thousand nine hundred fifty-
12 seven, until the first day of January, one thousand nine
13 hundred sixty-nine.

CHAPTER 32

(House Bill No. 48—By Mr. Bailey)

[Passed February 4, 1964; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact chapter one hundred nine, acts
of the Legislature of West Virginia, regular session, one
thousand nine hundred fifteen, as amended by chapter
eighty-eight, acts of the Legislature, regular session, one
thousand nine hundred seventeen, chapter one hundred
seventy-one, acts of the Legislature, regular session, one
thousand nine hundred twenty-one, chapter one hundred
twenty-four, acts of the Legislature, regular session, one
thousand nine hundred twenty-five, chapter one hundred
sixty-seven, acts of the Legislature, regular session, one
thousand nine hundred forty-five, chapter one hundred
eighty-seven, acts of the Legislature, regular session, one
thousand nine hundred fifty-five, and chapter one hundred
eighty-one, acts of the Legislature, regular session, all relating to
the court of common pleas of Kanawha county, and providing
a second judge therefor.

Be it enacted by the Legislature of West Virginia:

That chapter one hundred nine, acts of the Legislature of
West Virginia, regular session, one thousand nine hundred
fifteen, as amended by chapter eighty-eight, acts of the Legis-
lature, regular session, one thousand nine hundred seventeen,
chapter one hundred seventy-one, acts of the Legislature, regular session, one
thousand nine hundred twenty-one, chapter one hundred
seventy-one, acts of the Legislature, regular session, one
thousand nine hundred sixty-seven, acts of the Legislature, regular session, one
thousand nine hundred forty-five, chapter one hundred
eighty-seven, acts of the Legislature, regular session, one
thousand nine hundred fifty-five, and chapter one hundred
eighty-one, acts of the Legislature, regular session, one
thousand nine hundred fifty-seven, all relating to the
court of common pleas of Kanawha county, and providing
a second judge therefor.
cision, one thousand nine hundred twenty-five, chapter one hundred sixty-seven, acts of the Legislature, regular session, one thousand nine hundred forty-five, chapter one hundred eighty-seven, acts of the Legislature, regular session, one thousand nine hundred fifty-five, and chapter one hundred eighty-one, acts of the Legislature, regular session, one thousand nine hundred fifty-seven, be amended and reenacted to read as follows:

Court of Common Pleas of Kanawha County.

Section

1. Court of common pleas continued as court of limited jurisdiction with two judges; regular, special or adjourned terms; judges may sit separately or together; separate sittings of judges to be designated division I and division II; power, authority and jurisdiction of judges; special judges.

2. Apportioning business of court between judges; rules and regulations.

3. Jurisdiction of court; right of appeal to the circuit court of Kanawha county.

4. Judges to be resident members of the bar of Kanawha county and have same qualifications as circuit judge; present judge continued in office; election of judges; terms; filing certificates of candidacy in year 1964.

5. Powers conferred by law upon circuit courts, including appointment of commissioners, also conferred upon said court; powers of judges in vacation.

6. Jurisdiction of court presumed unless contrary plainly appears.

7. Power to punish for contempt.

8. County court to provide offices, rooms, books, office equipment, supplies and seals; full faith and credit to be given records.

9. Clerk of circuit court ex officio clerk of court and entitled to same fees.

10. Salary of judges; payment from county treasury.

11. Salary of clerk; compensation of sheriff for attendance upon court.

12. Three terms of court annually; adjourned and special terms authorized.

13. Terms to be held in Charleston at county courthouse or other appointed place.

14. Sheriffs or deputies to execute process of court; power and right of officers; fees of sheriff.

15. Petit jurors empaneled in same manner as for circuit court and entitled to same compensation; appointment of jury commissioners.

16. Transfer of causes from one division of court to the other and to the circuit court; election of special judge and compensation thereof.

17. Transfer of actions from circuit court to the court of common pleas and from the court of common pleas to the circuit court to expedite business.

18. Cases in which appeals may be allowed and writs of error and supersedeas awarded to judgments, etc., of court.

19. Appeals to circuit court; petition; docketing and proceeding with appeals.
20. Appeals to the supreme court of appeals in cases where circuit court affirms judgment or order as being plainly right; suspension of execution of judgment, order or decree pending appeal.

21. Circuit court may affirm or reverse judgment or order in whole or in part; judgment or order reversed to be remanded for further proceeding and final determination; duties of clerk.

22. Hearing and determining contest involving office of judge.

23. Filling vacancy in office of judge.


25. Rules and law governing taxation of costs.

26. Applicability of article three, chapter fifty-one of code to court.

27. Power to punish for contempt.

28. Court or judge thereof may grant writs of habeas corpus as provided by law.

29. West Virginia reports and acts of Legislature to be furnished judges.

30. Judgment creditors entitled to liens, etc., to secure or recover upon judgment of court; where judgments docketed; docketing executions on judgments.

31. Attachments issued by clerk of court; manner of service; effect.


Section 1. Court of Common Pleas Continued as Court of Limited Jurisdiction with Two Judges; Regular, Special or Adjudged Terms; Judges May Sit Separately or Together; Separate Sittings of Judges to Be Designated Division I and Division II; Power, Authority and Jurisdiction of Judges; Special Judges.—The “Court of Common Pleas of Kanawha County” heretofore established as a court of limited jurisdiction within and for the county of Kanawha is hereby continued. On and after January first, one thousand nine hundred sixty-five, sometimes herein-after referred to as “said date,” such court shall have two judges to be selected as hereinafter provided.

The judge presently serving as judge of said court may continue to hold any regular, special or adjourned term of said court. On and after said date, either or both judges of said court may hold any regular, special or adjourned term of the court. On and after said date, the judges may sit together for transacting any business of the court for which it is proper in their opinion that they should sit together and may hold court separately or together, but no one may demand that any cause be heard by the judges sitting together. At any time that the judges shall sit separately the courts shall be designated “Division I” and “Division II” of the court of common pleas of Kanawha county, and each shall have and exercise the same
power, authority and jurisdiction as are or may be vested
in the court of common pleas of Kanawha county. Either
of said divisions may be held by a judge of a circuit court
or by another person in any case where the circuit court
of the county might be held by a judge of another circuit
court or another person.

Sec. 2. Apportioning Business of Court between Judges;
Rules and Regulations.—On and after said date, the busi-
ness of the court may be apportioned between the two
judges by the judge thereof longest in continuous service
as a judge of a court of record of this state or, if both shall
have served for the same period, by the senior in years,
who shall serve as chief judge of the court; if such judge
does not serve as chief judge, the other judge shall be
designated as such. If the chief judge is temporarily dis-
qualified or unable to serve, the other judge shall serve
temporarily in his stead. On and after said date, the work
of said court shall be apportioned in accordance with
standards, procedures, rules and regulations established
by the two judges of said court and the judge of the cir-
cuit court of Kanawha county.

Sec. 3. Jurisdiction of Court; Right of Appeal to the
Circuit Court of Kanawha County.—The said court shall
continue to have original jurisdiction within the county
of Kanawha concurrent with the circuit court of said
county in all suits and proceedings in equity, in all actions
of ejectment, and in all civil actions or proceedings at law,
except where it shall appear from the pleadings that the
matter or thing in controversy in any such civil action or
proceeding at law exceeds in value the sum of five hun-
dred thousand dollars; and also of appeals from the judg-
ments of justices of the peace in said county in civil cases
when such appeals shall be to said court in the same
manner and under the same regulations as provided in
the general law for appeals from justices and shall also
continue to have jurisdiction concurrent with the circuit
court of said county as to the supervision and control of
all proceedings before justices of the peace or municipal
courts of said county in civil cases, by mandamus, prohibi-
tion, habeas corpus or certiorari, subject to the right of
appeal to the circuit court of Kanawha county, as hereinafter provided.

Sec. 4. Judges to Be Resident Members of the Bar of Kanawha County and Have Same Qualifications as Circuit Judge; Present Judge Continued in Office; Election of Judges; Terms; Filing Certificates of Candidacy in Year 1964.—Any and all judges of said court shall be resident members of the bar of Kanawha county, and have the same qualifications as a circuit judge.

The judge presently serving as judge of the court of common pleas of Kanawha county shall continue in office until the end of his term, expiring December thirty-one, one thousand nine hundred sixty-four, and shall continue until and including said date to perform and exercise all the duties of said court. At the general election of this state to be held on the Tuesday next after the first Monday in November, one thousand nine hundred sixty-four, two judges of the court of common pleas of Kanawha county shall be elected, one of whom shall be elected for a term of four years and one of whom shall be elected for a term of eight years, each said term to begin on January first, one thousand nine hundred sixty-five, and quadrennially thereafter one judge shall be elected for a term of eight years. Persons who filed their certificates of candidacy in accordance with the provisions of section seven, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, as candidates for nomination for election as a judge of said court at said general election to be held in the year one thousand nine hundred sixty-four shall be deemed to have filed for the eight-year term. Notwithstanding the provisions of section seven, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, persons filing as candidates for nomination for election as a judge of said court for the four-year term at said general election to be held in the year one thousand nine hundred sixty-four may file their certificates of candidacy not later than the fifteenth day of February, one thousand nine hundred sixty-four, which certificates must be received by the clerk of the
circuit court before midnight, eastern standard time, of
that day or, if mailed, shall be postmarked before that
hour.

Sec. 5. Powers Conferred by Law upon Circuit Courts,
Including Appointment of Commissioners, Also Conferred
upon Said Court; Powers of Judges in Vacation.—The
powers, jurisdiction and obligations conferred by law
upon the circuit courts in the trial of civil cases and pro-
ceedings, and the modes and procedures authorized
therein within the county of Kanawha, including the ap-
pointment of commissioners, heretofore conferred upon
and exercised by the said court of common pleas of Kana-
wha county, in respect to all cases, matters and proceed-
ings, of which the last named court has heretofore been
given and is given jurisdiction by this act shall continue
to be vested in, conferred upon and exercised by said
court; and the judge of said court, and on and after said
date, each judge of said court, shall have the same powers
in vacation as are now or may hereafter be conferred
upon the judge of the circuit court of Kanawha county
in respect to all cases, matters and proceedings within
the jurisdiction of said court of common pleas.

Sec. 6. Jurisdiction of Court Presumed Unless Contrary
Plainly Appears.—It shall not be necessary in any case or
proceeding in said court of common pleas that the facts
authorizing it to take jurisdiction or proceeding shall be
set forth upon the record, but the jurisdiction shall be
presumed unless the contrary plainly appears from the
record.

Sec. 7. Power to Punish for Contempt.—The said court
of common pleas shall have the same powers to punish
for contempt as are conferred upon the circuit court by
law.

Sec. 8. County Court to Provide Offices, Rooms, Books,
Office Equipment, Supplies and Seals; Full Faith and
Credit to Be Given Records.—The county court, or tri-
bunal acting in lieu thereof in Kanawha county, shall
provide necessary offices, rooms, equipment and office
supplies, including record books and a seal for said court
and for the judge thereof, and, on and after said date for each of the judges thereof; and shall likewise provide the necessary secretarial help for the judge of said court, and, on and after said date for each of the judges thereof. Full faith and credit shall be given to the records of said court and to the certificates of any judge or clerk thereof, whether the seal of the court be affixed thereto or not, in like manner and with like effect as if the same were records of the circuit court or certificates of the judge or clerk of the circuit court similarly authenticated.

Sec. 9. Clerk of Circuit Court Ex Officio Clerk of Court and Entitled to Same Fees.—The clerk of the circuit court of Kanawha county shall be ex officio clerk of said court of common pleas and perform the duties thereof and shall receive the same fees as are allowed by law, for similar services to the clerk of the circuit court; and in the discharge of his duties as clerk of the court of common pleas he shall be subject to all statutes relating to the clerk of the circuit court. All process, rules and orders of said court in the exercise of its jurisdiction shall be signed by the clerk thereof, and be directed to the sheriffs of the proper counties wherein the same are to be executed, and they shall be executed in like manner and with the same effect as process issuing from the circuit court of said county.

Sec. 10. Salary of Judges; Payment from County Treasury.—After the first day of January, one thousand nine hundred sixty-five, each of said judges shall for their services receive fifteen thousand dollars per annum, to be paid in monthly installments out of the county treasury of Kanawha county, out of funds of said treasury, in the manner provided by statute. The salary of the present judge of said court shall continue as provided in chapter one hundred eighty-seven, acts of the Legislature, regular session, one thousand nine hundred fifty-five, until the first day of January, one thousand nine hundred sixty-five.

Sec. 11. Salary of Clerk; Compensation of Sheriff for Attendance upon Court.—The clerk of said court shall be paid a salary as provided by general law, and the sheriff
shall be allowed the same compensation for attendance
upon said court, and, on and after said date, upon each
division of said court as is now or may hereafter be
allowed by law for attendance upon the circuit court.

Sec. 12. Three Terms of Court Annually; Adjourned
and Special Terms Authorized.—There shall be three
terms of said court held in each year, commencing on
the third Monday in February, third Monday in June,
and the third Monday in October. Adjourned and special
terms of said court may be called and held as provided for
special and adjourned terms of the circuit court.

Sec. 13. Terms to Be Held in Charleston at County
Courthouse or Other Appointed Place.—The said terms
of said court shall be held in Charleston in said county of
Kanawha at the courthouse thereof except that, on and
after said date, either of the divisions of said court may be
held at a place other than the courthouse, but in the same
city, as may be appointed by joint order of the judges
thereof.

Sec. 14. Sheriffs or Deputies to Execute Process of
Court; Power and Right of Officers; Fees of Sheriff.—The
sheriff of Kanawha county and the sheriffs of the several
counties of the state shall by themselves or their deputies
execute all process of said court, or issued by the clerk
thereof, directed to them respectively, and all process
emanating from said court, or issued by the clerk thereof,
shall be directed to and executed by them in the same
manner as is provided by law as to process issuing from
the circuit court or its clerk; and the sheriff of Kanawha
county shall perform the same duties and services for the
court of common pleas of Kanawha county as he now by
law is required to perform for the circuit court of said
county; and in the execution of the process, rules and
orders of said court the said officers shall have the same
power and rights, be subject to the liabilities, govern
themselves by the same rules and principles of law and
the statutes of the state, and be entitled to the same fees
as though the process issued from the circuit court of said
county.
Sec. 15. Petit Jurors Empaneled in Same Manner as for Circuit Court and Entitled to Same Compensation; Appointment of Jury Commissioners.—The petit juries for said court shall be chosen and empaneled in the same manner as they are chosen and empaneled in the circuit court and shall receive the same compensation except that on and after said date the two divisions of said court shall be treated as one for such purposes. Jury commissioners for said court shall be appointed to serve in accordance with section three, article one, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended. Until January first, one thousand nine hundred sixty-five, the judge of said court presently in office shall appoint the jury commissioners in accordance with said section three, article one, chapter fifty-two. On and after said date, the jury commissioners shall be appointed by the judges of said court in accordance with said section three, article one, chapter fifty-two. In the event on and after said date the two judges of said court are not able to agree on the appointment of jury commissioners, the chief judge shall appoint the jury commissioners.

Sec. 16. Transfer of Causes from One Division of Court to the Other and to the Circuit Court; Election of Special Judge and Compensation Thereof.—If the judge of said court in his judgment cannot properly preside at the hearing of any cause pending therein, said cause, in his discretion, by and with the consent of the circuit court of Kanawha county, may be transferred by order entered of record to said circuit court, and the original papers, together with a copy of the order transferring said cause shall be filed therein, and the cause shall be docketed therein and proceeded with as though the cause had originally been brought and proceedings therein had in said circuit court. When for any cause the judge of said court of common pleas is incapable of acting, or is absent, a special judge may be elected in the same manner as a special judge of the circuit court, and be governed in all respects so far as applicable by the laws governing special judges of the circuit court, and such special judge shall be allowed twenty-five dollars a day to be paid out of the
county treasury. If, on and after said date, either of the judges of said court in his judgment cannot properly preside at the hearing of any cause pending therein, said cause, in his discretion, may be transferred by order entered of record to the other division of said court, or, by and with the consent of the circuit court, to the circuit court of said county, and the original papers, together with a copy of the order transferring said cause shall be filed therein, and the cause shall be docketed therein and proceeded with as though the cause had originally been brought and proceedings therein had in said other division or in the circuit court. When for any cause either of the judges of said court of common pleas is incapable of acting, or is absent, the judge of the other division may act, or, in the event neither of such judges shall be available, a special judge may be elected in the same manner as a special judge of the circuit court, and be governed in all respects so far as applicable by the laws governing special judges of the circuit court, and such special judge shall be allowed twenty-five dollars a day to be paid out of the county treasury.

Sec. 17. Transfer of Actions from Circuit Court to the Court of Common Pleas and from the Court of Common Pleas to the Circuit Court to Expedite Business.—And to the end that justice may be administered without delay and to expedite the dispatch of the business of the circuit court and the court of common pleas of Kanawha county, the circuit court may transfer by order entered of record to the court of common pleas, any suit or proceeding at law or in equity now, or which may hereafter be, upon the docket of said circuit court, and within the jurisdiction of said court of common pleas, and such cause shall thereupon be docketed, proceeded with, heard and determined in all respects as though originally brought, matured and docketed in said court of common pleas; and the court of common pleas, and, on and after said date, either division of the court of common pleas, likewise, by and with the consent of the circuit court, may transfer by order entered of record to the circuit court, any case upon its docket, the same to be proceeded with in the circuit court in like manner.
Sec. 18. Cases in Which Appeals May Be Allowed and Writs of Error and Supersedeas Awarded to Judgments, etc., of Court.—Appeals may be allowed and writs of error or 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 all civil cases where the matter in controversy exclusive of costs, is of greater value or amount than one hundred dollars, wherein there is a final judgment or order.

(2) In controversies concerning the title or boundaries of land, the probate of a will, or the appointment of a personal representative, guardian, committee or curator.

(3) Concerning a mill, road, way, ferry or landing.

(4) Concerning the right of a corporation, county or district to levy tolls or taxes.

(5) In any case of quo warranto, habeas corpus, mandamus or prohibition.

(6) In any case involving freedom or the constitutionality of a law.

(7) In any case wherein there is a decree or order dissolving or refusing to dissolve an injunction, or requiring money to be paid, or real estate to be sold, or the possession or title of the property to be changed, or adjudicating the principles of the cause.

(8) In any case where there is a judgment or order quashing or abating, or refusing to quash or abate an attachment.

(9) 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 the new trial or rehearing to be had.

Sec. 19. Appeals to Circuit Court; Petition; Docketing and Proceeding with Appeals.—Any person who is a party to any such controversy wishing to obtain an appeal, writ of error or supersedeas, in the cases named in the eighteenth section of this act, may present to the circuit court of Kanawha county, or to the judge thereof in vacation, a petition therefor in accordance with the pro-
visions of article four, chapter fifty-eight of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, and every appeal, writ of error or supersedeas
from said court shall be docketed in the circuit court of
Kanawha county, and shall be proceeded with as provided
in said article four, chapter fifty-eight.

Sec. 20. Appeals to the Supreme Court of Appeals in
Cases Where Circuit Court Affirms Judgment or Order as
Being Plainly Right; Suspension of Execution of Judg-
ment, Order or Decree Pending Appeal.—In a case where-
in the appeal, writ of error or supersedeas is to the circuit
court and the court or judge thereof deems the judgment
or order plainly right, and rejects it on this ground, if the
order of rejection so state, no further petition shall after-
ward be presented for the same purpose, but the petition
and order of rejection with transcript of the record may
be presented to the supreme court of appeals, or judge
thereof, in vacation, for an appeal from said order of
rejection, if the matter is one of which said supreme court
of appeals has jurisdiction and, if allowed, the same
proceeding may be had thereon as if the same was a
petition originally from the circuit court of said county to
the supreme court of appeals. At the instance of any per-
son who desires to present such petition to the supreme
court of appeals, the circuit court or the judge thereof in
vacation may, during the term in which such order of
rejection was entered, or within twenty days after such
term is ended, upon notice in writing to the opposite party
or parties (in either case the court or the judge exercising
a discretion), make an order suspending the execution of
the judgment, order or decree of the court of common
pleas of Kanawha county, for a reasonable time to be
specified in such order, when such person shall give bond
before the clerk of the circuit court, in such penalty as
the court or judge may require, with a condition reciting
such judgment, decree or order, and such order of rejec-
tion, and the intention of such person to present such
petition, and providing for the payment of all such dam-
ages as any person may sustain by reason of such suspen-
sion in case supersedeas to such judgment, decree or order
Sec. 21. Circuit Court May Affirm or Reverse Judgment or Order in Whole or in Part; Judgment or Order Reversed to Be Remanded for Further Proceeding and Final Determination; Duties of Clerk.—The said circuit court, where an appeal, writ of error or supersedeas has been allowed by the said court or the judge thereof in vacation shall, upon the hearing thereof affirm said judgment or order if there be no error therein prejudicial to the appellant, or reverse the same in whole or in part if erroneous, and if reversed, shall remand the same back to the court of common pleas, and on and after January first, one thousand nine hundred sixty-five, to that division of said court of common pleas from which it came, to be further proceeded in and finally determined. And the clerk of said circuit court shall, as soon as practicable, transmit the decision of said circuit court to the clerk of said court of common pleas: Provided, That from any action of the circuit court in affirming or reversing any order or judgment of the court of common pleas, an appeal or writ of error shall lie to the supreme court of appeals.

Sec. 22. Hearing and Determining Contest Involving Office of Judge.—If the office of any judge of said court be contested, the contest shall be heard and determined in the same manner as the election of judges of the circuit court are determined.

Sec. 23. Filling Vacancy in Office of Judge.—If from any cause the office of any judge of said court shall become vacant, the vacancy shall be filled in the same manner as in the case of a vacancy in the office of judge of the circuit court.

Sec. 24. Removal of Judge from Office.—Any judge of said court may be removed from office for the same reasons and in the same manner as judges of the circuit court.

Sec. 25. Rules and Law Governing Taxation of Costs.—In the taxation of costs in said court the clerk and court
shall be governed by the same rules and provisions of law as are provided in the circuit court.

Sec. 26. Applicability of Article Three, Chapter Fifty-one of Code to Court.—Article three, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, shall apply to the court of common pleas of Kanawha county, in the same manner and to the same extent that it does to the circuit courts of the state.

Sec. 27. Power to Punish for Contempt.—The court of common pleas of Kanawha county and any judge thereof in vacation shall have the same power to punish for contempts as is conferred by law upon the circuit court of Kanawha county, or the judge thereof in vacation.

Sec. 28. Court or Judge Thereof May Grant Writs of Habeas Corpus as Provided by Law.—The court of common pleas of Kanawha county and any judge thereof in vacation shall, concurrent with the supreme court of appeals, the circuit court of said county, or any judge of either of said courts in vacation, grant the writ of habeas corpus ad subjiciendum, as provided in article four, chapter fifty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and all the provisions of said article shall be applicable thereto, and the same shall be governed as therein provided.

Sec. 29. West Virginia Reports and Acts of Legislature to Be Furnished Judges.—The West Virginia reports and bound acts of the Legislature are to be delivered to any and all judges of the said court in the same manner as they are required to be delivered to the circuit courts of the state.

Sec. 30. Judgment Creditors Entitled to Liens, etc., to Secure or Recover upon Judgment of Court; Where Judgments Docketed; Docketing Executions on Judgments.—Upon every judgment of said court the judgment creditors shall be entitled to all liens, executions and remedies to secure or recover the same to which they would be entitled if the same were a judgment of the circuit court of the said Kanawha county; judgments rendered in said
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9 court of common pleas may be docketed in the judgment
10 lien docket kept in the county clerk's office of any county
11 in like manner and with like effect as other judgments,
12 and executions on said judgments may likewise be
13 docketed the same as executions from the circuit court.

Sec. 31. Attachments Issued by Clerk of Court; Manner
2 of Service; Effect.—Attachments may be issued by the
3 clerk of said court of common pleas under the same regu-
4 lations and in the same cases as attachments are now
5 issued by the clerks of the circuit courts, whenever ap-
6 plicable, and be served in the same manner and with like
7 effect.

Sec. 32. Provisions of Act Severable.—In case it should
2 be judicially determined that any provision or provisions
3 of this act cannot be exercised or enforced under the con-
4 stitution and laws of this state, it is nevertheless the in-
5 tention that all portions of this act not so determined shall
6 nevertheless be and remain valid and effective.

CHAPTER 33

(House Bill No. 11—By Mr. Bailey)

[Passed January 31, 1964; in effect January 1, 1965. Approved by the Governor.]

AN ACT to amend and reenact section four, chapter one hun-
dred seventy-two, acts of the Legislature, regular session,
one thousand nine hundred forty-seven, as last amended
by chapter one hundred eighty-two, acts of the Legisla-
ture, regular session, one thousand nine hundred fifty-
seven, relating to the salary of the judge of the domestic
relations court of Kanawha county.

Be it enacted by the Legislature of West Virginia:

That section four, chapter one hundred seventy-two, acts of
the Legislature, regular session, one thousand nine hundred
forty-seven, as last amended by chapter one hundred eighty-
two, acts of the Legislature, regular session, one thousand nine
hundred fifty-seven, be amended and reenacted to read as follows:

Section

Section 4. Salary.—The judge of the domestic relations court of Kanawha county, West Virginia, shall, from and after the first day of January, one thousand nine hundred sixty-five, receive for his services a salary in the amount of fifteen thousand dollars per annum, to be paid in monthly installments out of the county treasury of Kanawha county, out of funds of said treasury, in the manner provided by statute. The salary of said judge shall continue as provided in chapter one hundred eighty-eight, acts of the Legislature, regular session, one thousand nine hundred fifty-five, until the first day of January, one thousand nine hundred sixty-five.

CHAPTER 34
(House Bill No. 62—By Mr. Mathis and Mr. Hager)

!Passed February 5, 1964: in effect from passage. Approved by the Governor.

AN ACT to authorize and empower the county court of Logan county, West Virginia, to transfer a certain parcel of land, owned by said county court, to the United States of America.

Be it enacted by the Legislature of West Virginia:

Section
1. County court of Logan county authorized to transfer certain owned real property to the United States of America.

Section 1. County Court of Logan County Authorized to Transfer Certain Owned Real Property to the United States of America.—The county court of Logan county is hereby authorized and empowered to sell and transfer to the United States of America all or any part of a certain tract or parcel of real property owned by said county court of Logan county, West Virginia, being that certain
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8 parcel of real estate in the city of Logan, county of Logan,
9 owned and occupied by the county court of Logan county,
10 West Virginia, as the Logan county jail, which parcel is
11 bounded and described as follows:
12  
13 Beginning at the point of intersection of the eastern
14 line of Hudgins street, and the northern line of Guyan
15 street, said point being located one hundred thirteen
16 feet from the intersection of said line of Hudgins street
17 with the northern right of way line of the Chesapeake
18 and Ohio Railway Company; thence running in a north-
19 erly direction along the eastern line of Hudgins street
20 a distance of fifty-two and three-tenths feet, more or less,
21 thence leaving Hudgins street and running in an easterly
22 direction at right angles therefrom to a point on the
23 western line of Reservoir street (also known as High-
24 land avenue); thence running with the western line of
25 Reservoir street in a southerly direction a distance of
26 sixty-four feet, more or less, to the point of intersection
27 of the western line of Reservoir street and the northern
28 line of Guyan street; thence running along the northern
29 line of Guyan street in a westerly direction to the place
30 of beginning.
31  
32 The consideration of such sale or transfer shall be as
33 negotiated between the grantor and grantee.

CHAPTER 35

(House Bill No. 25—By Mr. Watson)

[Passed February 1, 1954; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, chapter sixty-nine, acts of the Legislature, regular session, one thousand nine hundred nineteen, as last amended by chapter one hundred ninety-one, acts of the Legislature, regular session, one thousand nine hundred fifty-five, relative to the salary of the judge of the criminal court of Marion county.
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 last amended by chapter one hundred ninety-one, acts of the Legislature, regular session, one thousand nine hundred fifty-five, be amended and reenacted to read as follows:

Section 4. Salary of Marion county criminal court judge.

Section 4. Salary of Marion County Criminal Court Judge.—The judge of said criminal court shall receive for his services a salary of ten thousand five hundred dollars per year, said amount to be fixed and paid from year to year, in equal monthly installments, by the county court of said county, out of the funds of said county, as provided by statute.

CHAPTER 36

(Passed February 4, 1964; in effect from passage. Approved by the Governor.)

AN ACT to create and establish in the county of Marshall a court of limited jurisdiction to be known and designated as “The Common Pleas Court of Marshall County,” and defining its jurisdiction.

Be it enacted by the Legislature of West Virginia:

Section 1. Court created and established.

Section 2. Jurisdiction.

Section 3. Contempt.

Section 4. Judge, qualifications, term, appointment and election.

Section 5. Salary.

Section 6. Clerk; powers, duties and compensation.

Section 7. Sheriff; powers and duties.

Section 8. Prosecuting attorney; powers and duties.

Section 9. Transfer of pending cases; certification of matters to other court.

Section 10. Terms of court; maturity of causes; procedure.

Section 11. Supplies; finances; seal; court rooms and offices.

Section 12. Appeals.

Section 13. Separability; repeal.

Section 1. Court Created and Established.—There is hereby created and established in and for the county of
Marshall, with authority and jurisdiction coextensive
with the county, a court of limited jurisdiction to be
known and designated as "The Common Pleas Court of
Marshall County," to be held and presided over by a
judge to be appointed or elected as provided by this act.
Wherever and whenever the word "Court" is hereinafter
in this act used, it shall be taken to mean and refer to
the Common Pleas Court of Marshall County, unless the
text context clearly indicates otherwise.

Sec. 2. Jurisdiction.—The court shall have jurisdi-
tion within Marshall county, concurrent with the circuit
court of said county of causes, matters, proceedings and
suits relating to (a) affirmation of marriages, annulment
of marriages, separate maintenance, divorce, alimony,
the care, custody, maintenance and education of children
of litigants and the adjudication of property rights arising
out of same, and all other causes and matters arising
within the provisions of chapter forty-eight, article two
of the official code of West Virginia, commonly known
as "the divorce law," and of all amendments and re-
enactments thereof; (b) adoption proceedings arising out
of article four of the chapter last aforesaid, and of all
amendments and reenactments thereof; (c) proceedings
for a change of name arising out of article five of the
chapter last aforesaid, and of all amendments and re-
enactments thereof; (d) the enforcement of support of
dependents arising out of article nine of the chapter last
aforesaid, and of all amendments and reenactments
thereof; (e) of all civil actions or proceedings at law,
except where it shall appear from the pleadings that the
matter in controversy exceeds the value of one hundred
thousand dollars; (f) of all proceedings of eminent do-
main arising out of chapter fifty-four of the official code
of West Virginia and all amendments and reenactments
thereof; (g) of all cases arising under chapter forty-nine,
articles five, six and seven of the official code of West
Virginia and all amendments and reenactments thereof;
(h) appellate jurisdiction in all cases, civil and criminal,
from judgments of justices of the peace in said county,
police judges or mayors of any incorporated city, town
or village, or of any inferior tribunal wherein, wherein an
appeal, writ of error, supersedeas or writ of certiorari
may be allowed; (i) all proceedings under article one,
chapter thirty-seven of the official code of West Virginia
and all amendments and reenactments thereof; (j) any
and all other matters arising under the present and future
laws of the state of West Virginia, common or statutory,
incidental to the foregoing, including, but not limited to, the
disposition of property and property interests involved in any such matters, and, as well, the adjudication of any and all rights, titles and interests necessary or incidental to a full determination of all such matters pending in said court.

Said court shall have general equity jurisdiction in
cases, matters, proceedings and suits before it within its jurisdiction with power to grant injunctions and to require and take recognizances.

The proceedings, modes of procedures, power and jurisdiction conferred by law upon the circuit court of Marshall county in any and all said causes, matters, proceedings and suits, are hereby conferred upon and shall be exercised by said court.

The judge of said court shall have the same powers in vacation as to any and all of said causes, matters, proceedings and suits that are conferred upon the judge of the circuit court of said county.

It shall not be necessary in any such causes or proceedings to set forth upon the record the facts authorizing said court to take jurisdiction thereof, but jurisdiction shall be presumed unless the contrary plainly appears from the record.

Sec. 3. Contempt.—Said court shall have the same powers to punish for contempt as are conferred upon said circuit court by law.

Sec. 4. Judge, Qualifications, Term, Appointment and Election.—The principal presiding officer of said court shall be a judge whose qualifications, term, appointment and election shall be as follows: The person appointed or elected to the office of judge shall be a member of the West Virginia state bar and a resident of Marshall county.
Vacancies in nomination for said office in the year one thousand nine hundred sixty-four shall be filled in the manner provided in section nineteen, article five, chapter three of the official code of West Virginia, as amended. At the general election regularly held on the Tuesday after the first Monday in November, one thousand nine hundred sixty-four, some person qualified as aforesaid shall be elected in the manner provided by law for the election of the circuit judges, to be the judge of said court for the next ensuing term of four years, beginning on January first, next following such election. At the general election regularly held on the Tuesday after the first Monday in November, one thousand nine hundred sixty-eight, and thereafter at intervals of eight years, some person qualified as aforesaid shall be elected in the manner provided by law for the election of the circuit judges, to be the judge of said court for the next ensuing term of eight years, beginning on January first, next following such election. The judge of said court may be removed from office for the same reasons and in the same manner as judges of the circuit court and shall be, except as to his term of office and jurisdiction, subject to the laws in force governing circuit judges. If from any cause the office shall become vacant, the vacancy shall be filled in the same manner as in the case of a vacancy in the office of the judge of the circuit court. Any judge so appointed or elected shall continue in such office until his successor is elected and qualified. Such judge, during his tenure in office, shall not engage in the practice of law.

Sec. 5. Salary.—The judge of said court shall, for his services receive the sum of eleven thousand five hundred dollars per annum, to be paid in monthly installments out of the treasury of Marshall county. The county court shall annually make provision by appropriate levy and appropriation for the payment of said salary.

Sec. 6. Clerk; Powers, Duties and Compensation.—The clerk of the circuit court of Marshall county shall, ex officio, be, act as and perform the duties of the clerk of the said court and shall exercise the same power and duties arising within the jurisdiction of said court as are
performed by him as clerk of the circuit court. All pro-
cesses, rules and orders of the court, in the exercise of
its jurisdiction, shall be signed by the clerk thereof to
be directed to the sheriffs of the proper counties wherein
the same are to be executed in like manner and with the
same effect as processes issuing from the circuit court of
Marshall county. For his services under and pursuant
to this act, the clerk shall receive no compensation in
addition to his annual salary as provided by general
statute.

Sec. 7. Sheriff; Powers and Duties.—The sheriff of
Marshall county and the sheriffs of the several counties
in the state shall, by themselves or their deputies, exe-
cute all processes of said court, issued by the clerk
thereof, directed to them respectively, and all processes
emanating from said court shall be directed to and be
executed by them in the same manner as is provided by
law as to processes issuing from the circuit court of said
county. The sheriff of Marshall county shall perform the
same duties and services for said court as he is now by
law required to perform for the circuit court of Marshall
county. In the execution of processes, rules and orders
of the court, the sheriff shall have the same powers and
rights, be subject to the same liabilities, govern himself
by the same rules and principles of law and the statutes
of the state, as though said processes issued from the
circuit court of Marshall county.

Sec. 8. Prosecuting Attorney; Powers and Duties.—
The prosecuting attorney of Marshall county shall attend
the terms of said court, either by himself or his assistant,
and shall perform the duties of his office as required by
law.

Sec. 9. Transfer of Pending Cases; Certification of
Matters to Other Court.—The judge of the circuit court
of said county may, in his discretion, certify to said court
on and after the first day of January, one thousand nine
hundred sixty-five, any portion or all of the causes, mat-
ters, proceedings and suits within the herein defined
jurisdiction of said court pending in said circuit court on
the first day of January, one thousand nine hundred
sixty-five, or thereafter instituted therein, and all causes, matters, proceedings and suits so certified to said court shall be docketed and thereafter proceeded with therein according to law. The judge of said circuit court, in his discretion, may also direct the clerk of said circuit court to certify to and docket in said court all such causes, matters, proceedings and suits properly within the jurisdiction of said court as may be instituted on and after the first day of January, one thousand nine hundred sixty-five, in said circuit court. In the event of the absence or disqualification of the judge of said circuit court or said common pleas court, any matter coming within the purview of this act pending in either court may be certified to the other court, docketed therein and proceeded with according to law.

Sec. 10. Terms of Court; Maturity of Causes; Procedure.—For the purpose of maturing, docketing, hearing and determining all causes, matters, proceedings and suits properly determinable in said court there shall be regularly continued and held three terms of court each year, beginning on the second Monday in March, July and November. Special and adjourned terms of said court may be called and held whenever, in the discretion of the judge of said court, public interest requires such special or adjourned terms. The judge of said court shall have like jurisdiction and authority in vacation of said court to make and enter such proper orders in any cause, matter, proceeding or suit pending in said court as the judge of the circuit court has under the laws of the state.

The mode of procedure in causes instituted in said court shall be the same as that prescribed for the circuit court in similar causes. The court is authorized and empowered to appoint such additional officers, divorce commissioners, commissioners, special commissioners, jury commissioners and such clerical and secretarial assistants as shall enable said court to discharge all the duties required of it under the provision of this act and the general laws of the state. Such appointments shall be made by the judge and the appointees shall serve during the pleasure of the judge.
The judge of said court shall have power to make and
promulgate such rules for the transaction of the business
of the court as may be necessary: Provided, That all such
rules shall be in conformity with the laws of the state of
West Virginia and with any rules promulgated by the
supreme court of appeals of this state, and such rules
shall be filed in the office of the clerk of said supreme
court of appeals.

Sec. 11. Supplies; Finances; Seal; Court Rooms and
Offices.—It shall be the duty of the county court of
Marshall county to provide all record and other books
and stationery, postage, and supplies that may be neces-
sary for said court. Likewise a seal for said court shall
be provided and full faith and credit shall be given to the
records of the court and certificates of its judge or clerk
in like manner and with the same effect as if the same
were records of the circuit court similarly authenticated.
The county court of Marshall county shall likewise fur-
nish such rooms, furniture and equipment for the proper
conduct and administration of said court and shall,
through annual levy and appropriations, make provision
for the payment for all such rooms, supplies and equip-
ment. It shall be the duty of the county court of Marshall
county to pay the salary of a full-time secretary in the
office of the judge of said court, to be appointed by him,
whose compensation shall be not less than one thousand
eight hundred dollars nor more than two thousand seven
hundred dollars annually, to be determined by the judge.

Sec. 12. Appeals.—Appeals from, or writs of error or
supersedeas to, any judgment, decree or order of said
court shall be governed by and subject to the provisions
of article four, chapter fifty-eight of the official code of
West Virginia, and of all enactments and reenactments
thereof pertaining to the subject of "Appeals from Courts
of Record of Limited Jurisdiction."

Sec. 13. Separability; Repeal.—The provisions of this
act shall be construed as separable and severable and
should any provision or part hereof be held unconstitu-
tional or for any reason invalid the remaining provisions
or parts shall not be thereby affected.
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6 All acts or parts of acts in conflict herewith are hereby
7 repealed.

CHAPTER 37
(House Bill No. 55—By Mr. Casto)

[Passed February 6, 1964; in effect July 1, 1964. Approved by the Governor.]

AN ACT authorizing the county court of Mason county to expend funds for the purpose of paying for medical care and nursing of indigent persons.

Be it enacted by the Legislature of West Virginia:

Section 1. Mason county authorized to expend funds for medical care and nursing of indigent persons.

Section 1. Mason County Authorized to Expend Funds for Medical Care and Nursing of Indigent Persons.—The county court of Mason county is hereby authorized and empowered to expend county funds, by special order or appropriation, for medical and nursing care of medically indigent persons as determined by the Mason county department of welfare, who are residents of Mason county, and who are not otherwise eligible for medical assistance.

CHAPTER 38
(House Bill No. 61—By Mr. Christian)

[Passed February 6, 1964; in effect July 1, 1964. Approved by the Governor.]

AN ACT to amend and reenact chapter eighteen, acts of the Legislature, regular session, one thousand eight hundred ninety-three, as amended, entitled “An act to establish a Criminal Court in Mercer County,” so as to change the
name of said court, enlarge its jurisdiction and as so changed and enlarged to continue its existence.

Be it enacted by the Legislature of West Virginia:

That chapter eighteen, acts of the Legislature, regular session, one thousand eight hundred ninety-three, as amended, be amended and reenacted so as to read as follows:

The Intermediate Court of Mercer County.

Section
1. Court established.
2. Jurisdiction concurrent with circuit court.
3. Judge; election; term; qualifications; removal from office; filling vacancy.
4. Salary of judge; payment thereof.
5. General powers and jurisdiction.
7. Power to punish for contempt.
8. Terms of court; when and where held.
9. Grand juries; regular and special; offenses which may be considered; applicability of general law; choosing and impaneling grand and petit jurors; compensation of jurors.
10. Clerk of court; fees, signing of process, etc., of court and execution thereof.
11. Sheriffs to execute process, duties of sheriff of Mercer county; powers, liabilities and fees of sheriffs and other officers.
12. Indictments, civil actions and domestic relations cases in circuit court may be certified to intermediate court.
13. Change of venue.
14. County court to provide record books, etc., office space and secretarial assistance to judge; effect of certificates of judge or clerk.
15. Appeals may be allowed and writs of error awarded to judgments, etc., of judge of intermediate court; appeals in cases relating to public revenue.
16. Petitions for appeal, writ of error, etc.; who may present and to whom; laws governing; time limitation.
17. Appeals, etc., docketed in circuit court of Mercer county; expeditious proceeding.
19. Proceedings on appeals, writs of error, etc., allowed by the circuit court.
20. Authority to grant writs of habeas corpus; requirements for issuance.
21. Prosecuting attorney to attend terms of court and perform duties required by law.
22. Divorce commissioner; qualifications; duties; fees.
23. General laws applicable to court and judge.

Section 1. Court Established.—A court of record of limited jurisdiction is hereby established and continued
3 in and for the county of Mercer, to be held and presided
4 over by a judge elected or to be elected or appointed as
5 provided by this act, which court shall be designated and
6 known as “The Intermediate Court of Mercer County.”

Sec. 2. Jurisdiction Concurrent with Circuit Court.—
2 The said court, which is the same court originally estab-
3 lished by chapter eighteen, acts of the Legislature, regu-
4 lar session, one thousand eight hundred ninety-three but
5 with its name and jurisdiction changed as in this act pro-
6 vided, shall continue to have jurisdiction within the
7 county of Mercer, concurrent with the circuit court of
8 said county, of all felonies, misdemeanors and offenses
9 committed or which may be committed within the said
10 county of Mercer, and shall also have, concurrent with
11 the circuit court of said county, jurisdiction, super-
12 vision and control by appeal, mandamus, prohibition and
13 certiorari of all proceedings before justices of the peace
14 of said county or the police court, mayor or other con-
15 stituted tribunal, board or commission of any city, town
16 or village in said county. The said court shall likewise
17 have jurisdiction within said county of Mercer, concur-
18 rent with the circuit court of said county, of all civil
19 actions or proceedings at law, except where it shall ap-
20 pear from the pleadings that the matter or thing in
21 controversy in any such civil action or proceeding at law,
22 exclusive of interests and costs, exceeds in value the sum
23 of five thousand dollars, and all summary proceedings at
24 law and any other manner of action or proceeding at law
25 authorized by the general laws of West Virginia, as well
26 as of appeals from judgments of the justices of said
27 county when such appeals shall lie to the said court in
28 the same manner and under the same regulations as
29 provided in the general laws for appeals from justices.
30 The said court shall likewise have jurisdiction within
31 said county of Mercer, concurrent with the circuit court
32 of said county, of suits for divorce, annulment of marriage
33 and separate maintenance, of bastardy proceedings and
34 actions for maintenance of illegitimate children as pro-
35 vided by the general laws of West Virginia, and the said
36 court shall continue to have jurisdiction within said
37 county of proceedings for adoption and all juvenile and
other matters of which the aforesaid criminal court of
Mercer county was given jurisdiction by the general laws
of West Virginia or of which the court hereby estab-
lished may be given jurisdiction by such general laws.

Sec. 3. Judge; Election; Term; Qualifications; Re-
moval from Office; Filling Vacancy.—The judge of the
aforesaid criminal court of Mercer county elected at the
general election held in this state on the Tuesday after
the first Monday in November, one thousand nine hundred
sixty, shall hold his office as judge of said court and of the
court hereby established for the term of eight years from
the first day of January, one thousand nine hundred sixty-
one, and until his successor is duly elected and qualified;
and at the general election in this state to be held on the
Tuesday after the first Monday in November, one thou-
sand nine hundred sixty-eight, and every eight years
thereafter, there shall be elected by the legal voters of
said county a judge of the intermediate court of Mercer
county, who shall be a resident member of the bar of said
county, and shall be disqualified from practicing law in all
the courts of this state during his continuance in office,
who shall preside over said court for the term of eight
years from the first day of January succeeding said elec-
tion, and shall be, except as to jurisdiction, subject to the
laws in force governing circuit judges. The judge of said
court may be removed from office for the same reasons,
and in the same manner, as judges of circuit courts. And
if from any cause the office shall become vacant, the va-
cancy shall be filled in the same manner as in the case of a
vacancy in the office of the judge of the circuit court.

Sec. 4. Salary of Judge; Payment Thereof.—The judge
of said intermediate court shall receive for his services the
sum of twelve thousand dollars per annum to be paid out
of the county treasury of said county of Mercer.

Sec. 5. General Powers and Jurisdiction.—To the ex-
tent of the jurisdiction conferred by this act upon said
intermediate court, all powers, jurisdiction and authority
conferred by law upon circuit courts in the trial of cases
and in respect to proceedings and modes of procedure
authorized or required therein within the county of Mer-
cer are hereby conferred upon and shall be exercised by said intermediate court. And the judge of said intermediate court shall have the same powers in vacation as to all matters within the jurisdiction of said court that are now or may hereafter be conferred by law upon the judge of the circuit court of said county.

Sec. 6. Presumption of Jurisdiction.—It shall not be necessary in any cause or proceeding in said intermediate court that the facts authorizing it to take jurisdiction of the cause or proceeding be set forth upon the record, but jurisdiction shall be presumed unless the contrary plainly appears from the record.

Sec. 7. Power to Punish for Contempt.—The intermediate court shall have the same powers to punish for contempt as are conferred by law upon the circuit court.

Sec. 8. Terms of Court; When and Where Held.—There shall be held four terms of the said intermediate court in each year, which terms shall commence on the first Monday in January, the first Monday in April, the first Monday in July, and the first Monday in October of each year. The terms of said court shall be held at the courthouse in said county.

Sec. 9. Grand Juries; Regular and Special; Offenses Which May Be Considered; Applicability of General Law; Choosing and Impaneling Grand and Petit Jurors; Compensation of Jurors.—The said intermediate court shall impanel a grand jury at each term thereof. And said intermediate court, at a special or adjourned term thereof, whenever it shall be proper to do so, may order a grand jury to be drawn or summoned to attend such term. All of the provisions of article two, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, in regard to grand juries in the circuit court shall apply, as far as applicable, to grand juries in said intermediate court. The grand and petit jurors serving in said court, shall be chosen and impaneled in the same manner as they are chosen and impaneled by law in the circuit court, and shall receive the same compensation as said jurors in the circuit court.
Sec. 10. Clerk of Court; Fees, Signing of Process, etc., of Court and Execution Thereof.—The clerk of the circuit court of Mercer county shall act as and perform the duties of the clerk of said intermediate court, and shall collect the same fees as the clerk of the circuit court for similar services, and exercise the same powers and duties arising within the jurisdiction of said intermediate court. All processes, rules and orders of the said court in the exercise of its jurisdiction, shall be signed by the clerk thereof and be directed to the sheriffs of the proper counties wherein the same are to be executed; and they shall be executed in like manner and with the same effect as processes issuing from the circuit court of said county.

Sec. 11. Sheriffs to Execute Process, Duties of Sheriff of Mercer County; Powers, Liabilities and Fees of Sheriffs and Other Officers.—The sheriff of Mercer county and the sheriffs of the several counties in the state, shall by themselves or their deputies execute all processes of said intermediate court, and those issued by the clerk thereof directed to them respectively; and all processes emanating from said intermediate court heretofore or hereafter issued by the clerk thereof shall be directed to and executed by them in the same manner as is provided by law as to processes issuing from the circuit court or the clerk thereof. And the sheriff of Mercer county shall perform the same duties and services for the intermediate court of Mercer county, as he is now by law required to perform for the circuit court of said county, and in the execution of processes, rules and orders of said intermediate court, the said officer, and other officers of this state, this county, the several counties of this state, and municipal corporations in this state situate, shall have the same powers and rights, be subject to the same liabilities, govern themselves by the same rules and principles of law and the statutes of the state, and be entitled to the same fees as though the processes, rules and orders issued from the circuit court of said county.

Sec. 12. Indictments, Civil Actions and Domestic Relations Cases in Circuit Court May Be Certified to Intermediate Court.—The judge of the circuit court of said
county may in his discretion certify to said intermediate
court for trial any indictment for any felony or mis-
demeanor which may hereafter be found by a grand jury
impaneled in said circuit court, as well as any civil action
or other proceeding at law within the jurisdiction of
said intermediate court or suit for divorce, annulment
of marriage or separate maintenance which may now
be pending or hereafter instituted in said circuit court,
and thereupon the original papers filed in said circuit
court together with a copy of any order entered in the
cause by said court, including any order or judgment
theretofore entered therein, shall be transferred to said
intermediate court, and the cause shall be docketed
therein and proceeded with as though the indictment
had been returned or the cause originally brought and
all prior proceedings had in said intermediate court;
and said intermediate court shall likewise proceed
with all indictments for misdemeanor or felony hereto-
fore found by a grand jury in said criminal court of
Mercer county and all appeals to said court and other
proceedings pending therein as though the indictment
had been returned or the cause originally brought and all
prior proceedings had in said intermediate court.

Sec. 13. Change of Venue.—A change of venue of any
cause pending in said intermediate court may be ordered
as provided in section thirteen, article three, chapter
sixty-two of the code of West Virginia, one thousand nine
hundred thirty-one, as amended.

Sec. 14. County Court to Provide Record Books, etc.,
Office Space and Secretarial Assistance to Judge; Effect
of Certificates of Judge or Clerk.—It shall be the duty of
the county court of Mercer county to provide all record
books, other books, stationery and postage, as well as
office room and such stenographic or secretarial assistance
to the judge of said intermediate court as may be neces-
sary, and likewise a seal for said court but full faith and
credit shall be given to the record of said court, and the
certificates of its judge or clerk whether the seal of the
court be affixed thereto or not, in like manner and with
the same effect as if the same were records of the circuit
court similarly authenticated.

Sec. 15. Appeals May Be Allowed and Writs of Error
Awarded to Judgments, etc., of Judge of Intermediate
Court; Appeals in Cases Relating to Public Revenue.—
Appeals may be allowed, and writs of error and supersedeas
awarded to the judgments, decrees and orders of
said intermediate court by the circuit court of Mercer
county, or the judge thereof, in all cases or proceedings
as provided in article four, chapter fifty-eight of the
code of West Virginia, one thousand nine hundred thirty-
one, as amended, or elsewhere in the general laws of this
state; and in cases relating to the public revenues the right
of appeal shall belong to the state as well as the de-
fendant.

Sec. 16. Petitions for Appeal, Writ of Error, etc.; Who
May Present and to Whom; Laws Governing; Time Limi-
tation.—Any person who is a party to any such cause
wishing to obtain a writ of error, appeal or supersedeas
from any judgment, decree, or order of said intermediate
court may present to the circuit court of Mercer county,
or the judge thereof in vacation, a petition therefor and
the provisions of article four, chapter fifty-eight of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended, concerning appeals to the circuit
courts shall govern the proceedings on such appeal,
writ of error or supersedeas from said intermediate
court as to the duties of the petitioner, the said
courts or judges and clerks thereof: Provided, however.
That no such appeal, writ of error or supersedeas from
said intermediate court shall be allowed unless the peti-
tion therefor be presented within four months from the
date of such judgment or order.

Sec. 17. Appeals, etc., Docketed in Circuit Court of
Mercer County; Expeditious Proceeding.—Every appeal
writ of error or supersedeas from said intermediate court
shall be docketed in the circuit court of Mercer county,
and shall be proceeded in as expeditiously as may be
practicable.
Sec. 18. Application to Supreme Court of Appeals for Writ of Error on Rejection of Petition for Appeal by the Circuit Court.—In a case wherein the appeal, writ of error or supersedeas is to the circuit court, and the court or judge thereof deems the judgment, decree or order plainly right and rejects it on that ground, if the order of rejection so states, no further petition shall afterwards be presented for the same purpose; but the same petition with any brief in support thereof and the order of rejection with the transcript of the record may be presented to the supreme court of appeals, or a judge thereof in vacation, for an appeal, writ of error or supersedeas, from said order of rejection; and if allowed the same proceeding may be had thereon as if the same were a petition originally from the circuit court of said county to the said court of appeals.

Sec. 19. Proceedings on Appeals, Writs of Error, etc., Allowed by the Circuit Court.—The said circuit court where an appeal, writ of error or supersedeas has been allowed by such court, or the judge thereof in vacation, shall upon the hearing thereof, affirm said judgment, decree or order, if there be no error therein prejudicial to the appellant, or reverse the same in whole or in part if erroneous, and remand the same to the said intermediate court to be further proceeded in and finally determined. And the clerk of said circuit court shall as soon as practicable after the adjournment of said court, transmit the decision of said circuit court to the clerk of said intermediate court.

Sec. 20. Authority to Grant Writs of Habeas Corpus; Requirements for Issuance.—The intermediate court of Mercer county, or the judge thereof in vacation, concurrent with the supreme court of appeals and the circuit court of said county, shall have jurisdiction and authority to grant writs of habeas corpus, as provided in article four, chapter fifty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and all provisions of said article shall be applicable to the granting of such writs by said intermediate court; but in no case shall such writ be issued by said inter-
mediate court, or the judge thereof in vacation, on the
application of any person unless such person by himself
or by someone in his behalf shall apply for such writ by
petition and show by affidavit or other evidence probable
cause to believe that such person is detained in the
county of Mercer without lawful authority.

Sec. 21. Prosecuting Attorney to Attend Terms of Court
and Perform Duties Required by Law.—The prosecuting
attorney of Mercer county shall attend the terms of
court of said intermediate court, either by himself or his
assistant, and shall perform the duties of his office in
respect to said court and all causes and proceedings pend-
ing therein as required by the general laws of this state.

Sec. 22. Divorce Commissioner; Qualifications; Duties;
Fees.—The intermediate court, or the judge thereof in
vacation, may in his discretion, appoint a competent at-
torney in Mercer county as a commissioner to serve as
“divorce commissioner” to said court, as provided for
circuit courts by section twenty-four, article two, chapter
forty-eight of the code of West Virginia, one thousand
nine hundred thirty-one, as amended. Such commissioner
shall be subject to the same qualifications and require-
ments, shall perform the same duties in respect to cases
tried in said circuit courts, and shall be allowed the same
fees as provided by law for divorce commissioners of the
circuit courts.

Sec. 23. General Laws Applicable to Court and Judge.—
To the extent of the jurisdiction and authority hereby
conferred upon said intermediate court, the provisions
of sections three and four, article eight, chapter seven
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, as well as other provisions of
the general laws of this state to the extent applicable,
shall apply to the intermediate court of Mercer county,
and the judge thereof in the same manner and to the
same extent as to the circuit court of Mercer county and
the judge thereof.
AN ACT authorizing the county court of Wirt county to establish a special building and improvement fund and to make expenditures therefrom.

Be it enacted by the Legislature of West Virginia:

Section 1. Wirt County Court Authorized to Create Special Building and Improvement Fund.—The county court of Wirt county is hereby authorized and empowered to create a special fund for capital outlay known as the special building and improvement fund to be used for the construction, acquisition, improvement, renovation, reconstruction, remodeling, major repair or equipping of a new county office building, or other building or existing county buildings, county farm, courthouse or jail, and to purchase from said fund such real estate as may be deemed necessary to carry out the purposes herein set forth.

Sec. 2. Transfer of Funds into the Special Building and Improvement Fund.—The county court of Wirt county is hereby authorized and empowered to transfer to the special building and improvement fund, from year to year, funds received from the sale, leasing or rental of county property, real or personal, whether the same be now owned or hereafter acquired, and from year to year to lay a levy and to transfer the proceeds thereof into said special fund, and to transfer into said special fund any unexpended or surplus funds from the county general fund or from any other special fund of the county.
Sec. 3. Investment and Reinvestment of Funds in the Special Building and Improvement Fund.—The county court of Wirt county shall have the authority from time to time as may be deemed necessary to invest and reinvest the special fund herein authorized in such interest bearing United States government bonds, general obligation bonds of the state of West Virginia or any local subdivision thereof, or with the state sinking fund commission of West Virginia; and to withdraw all or part of said special fund so invested or reinvested as from time to time may be deemed necessary or proper by said county court.

Sec. 4. Expenditures from Fund.—The county court of Wirt county is hereby authorized and empowered to expend such part or all of the special building and improvement fund from time to time as may be deemed necessary by the court for the construction, acquisition, improvement, renovation, reconstruction, remodeling, major repair, or equipping of a new county office building or other building, or existing county buildings, county farm, courthouse or jail, or for the purpose of acquiring real estate incident to the purposes herein contained or for restocking the county farm with livestock, machinery and other items of husbandry as may from time to time be deemed necessary by the county court.

Sec. 5. Retransfer of Funds.—In cases of emergency or as may from time to time be deemed necessary, the county court of Wirt county, by a two-thirds vote thereof, shall be empowered to retransfer funds from the special building and improvement fund herein created to the county general fund.
RESOLUTIONS

(Only resolutions of general interest adopted by the Legislature during the 1964 Regular Session are included herein. Other resolutions will be found in the Journal of the Session.)

HOUSE CONCURRENT RESOLUTION NO. 6
(By Mr. Given)
[Adopted February 3, 1964.]

Placing an appropriate slogan on private automobile registration plates.

WHEREAS, The Department of Commerce and other agencies of the State of West Virginia have expended thousands of dollars promoting and advertising the mountain beauty of this State; and

WHEREAS, One of the many outstanding assets and attractions of this State is the beauty of its wondrous mountains and valleys; and

WHEREAS, The residents of the State of West Virginia drive their private automobiles throughout the entire United States; therefore, be it

Resolved by the Legislature of West Virginia:

That the commissioner of motor vehicles consider placing upon private automobile registration plates issued by his department an appropriate slogan.

HOUSE CONCURRENT RESOLUTION NO. 22
(By Mr. Myles and Mr. Watson)
[Adopted January 30, 1964.]

Directing the Joint Committee on Government and Finance to study the feasibility of revising and simplifying the general consumers sales and service tax rate structure.

WHEREAS, One of the most useful tools in the administrative arsenal of the State Tax Commissioner for the collection of the general consumers sales and service tax has been so-called
frequency tables which disclosed the average tax revenue derived for each dollar of sales from various classifications of business; and

WHEREAS, The accuracy of these tables had been established through long experience; and

WHEREAS, The imposition of the extra one-cent tax on each dollar on each sale of one dollar or more created a differential in rates between sales of one dollar or more and sales of ninety-nine cents or less; and

WHEREAS, Such differential made it difficult if not impossible to revise said frequency tables in such manner as to accurately establish, without the benefit of long experience, the expected tax revenue to be derived for each dollar of sales from various classifications of business; and

WHEREAS, The imposition of a straight tax rate of three cents per dollar on all sales and service above the minimal amount of monetary consideration on a sale (presently six cents) would make it feasible to adopt the aforesaid frequency tables to the new rate without distortion due to the varying percentages among different classifications of business of sales of ninety-nine cents or less; and

WHEREAS, Many merchants presently neglect to collect any consumers sales and service tax on sales of six cents to ten cents, regarding the same as an undue burden and nuisance, and the tax commissioner in auditing such sales spends a disproportionate amount of time for the revenue involved; and

WHEREAS, It is believed that the exemption of sales for a monetary consideration of ten cents or less would involve a loss of revenue that would be approximately balanced by making the basic tax rate a straight three cents on each dollar for all sales involving a monetary consideration of eleven cents or more; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance of the state Legislature be directed to study the feasibility of revising and simplifying the general consumers sales and service tax rate structure, and to make recommendations to the Legislature with respect thereto.
HOUSE CONCURRENT RESOLUTIONS

That the committee shall make a report of its recommendations on or before the commencement of the 1965 regular session of the Legislature, and shall accompany such report with drafts of any proposed legislation it may consider necessary to implement its recommendations.

The committee is authorized to employ such technical and clerical personnel as it deems proper to carry out its functions and to fix reasonable compensation for such persons as may be employed.

HOUSE CONCURRENT RESOLUTION NO. 27
(By Mr. Calendine and Mr. Corder)
(Adopted January 28, 1964.)

Designating February as American History Month.

WHEREAS, The month of February is steeped in American heritage and tradition; and

WHEREAS, It behooves all Americans to keep alive in their memory those traditions which have made our country great; and

WHEREAS, Various state legislatures have passed resolutions designating February as American History Month; and

WHEREAS, Concentrated effort is being made requesting Congress to pass a resolution for a national observance of American History Month in February; therefore, be it

Resolved by the Legislature of West Virginia:

That the month of February be designated as American History Month.

HOUSE CONCURRENT RESOLUTION NO. 30
(By Mr. Edgar)
(Adopted February 1, 1964.)

Relating to providing full accessibility to public buildings by the physically handicapped.

WHEREAS, Of the population of the United States, approximately one out of every seven persons possesses a substantial
physical disability, which ratio, based on available information, is equally applicable to the population of the State of West Virginia; and

WHEREAS, Most public buildings in this State contain features of construction which constitute serious obstacles to their full accessibility to the physically handicapped and thus materially restrict their use by handicapped persons for educational, cultural, religious, business, and other public purposes; and

WHEREAS, A program has been undertaken in the State of West Virginia to the end of alleviating the above problem by encouraging the design and construction of publicly-used buildings in such manner as more adequately to accommodate the needs of the physically handicapped persons of the State; therefore, be it

Resolved by the Legislature of West Virginia:

That the House and Senate of this State believing it in the best interests of this State and its citizens, to lend their support to the abovementioned program, do recommend to all departments and agencies of the government of this State, and to all municipalities, county courts, and boards of education within this State, that all public buildings hereafter constructed or substantially remodeled in this State be so constructed or remodeled as, so far as feasible, to be fully accessible to and usable by the physically handicapped persons of this State, and that, so far as feasible, such construction and remodeling be performed in accordance with the “American Standard Specifications for Making Buildings and Facilities Accessible to and Useable by the Physically Handicapped,” adopted by the American Standards Association with the approval of the American Institute of Architects.

HOUSE CONCURRENT RESOLUTION NO. 40
(By Mr. Seibert)
[Adopted February 4, 1964.]
Providing for a study of electronic data processing equipment and its effect on employment by state government.
WHEREAS, There has been a substantial increase in the use of electronic data processing equipment in industry and government; and

WHEREAS, Concern is being expressed over the loss of jobs incident to automation; and

WHEREAS, The Congress of the United States recently launched an investigation of governmental use of computers and other data processing equipment and their effect on governmental operations and employees; and

WHEREAS, Agencies of the State of West Virginia have participated in the use of electronic data processing equipment for several years; and

WHEREAS, Substantial appropriations have been made to agencies of the State of West Virginia for the purchase and/or lease of electronic data processing equipment; and

WHEREAS, Personal services appropriations have increased to a substantial degree in these same departments; and

WHEREAS, The Legislature is concerned with both the capital expenditures necessary to expansion in this field and the resultant changes in employment; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance conduct a study of the experience of West Virginia in the use of electronic data processing equipment; review the costs of these programs, resultant efficiency, change in volume of work, and their effect on state employment.

HOUSE CONCURRENT RESOLUTION NO. 49
(Originating in the House Committee on Finance)
[Adopted February 6, 1964.]

Creating a special interim committee to make a continuing audit of all receipts and disbursements of the Department of Commerce funds and of the Advisory Committee’s special fund established by executive order of the Governor, dated January seven, one thousand nine hundred sixty-four, in connection with the construction and operation
and maintenance of the West Virginia New York World's Fair Exhibition and directing the Department of Commerce and said Advisory Committee to cooperate with and furnish to the special interim committee such information as the committee may request with respect to such receipts and disbursements.

WHEREAS, The Department of Commerce was appropriated the sum of one hundred thousand dollars for the fiscal year one thousand nine hundred sixty-two—one thousand nine hundred sixty-three for the construction and operation of the West Virginia New York World's Fair Exhibition; and

WHEREAS, The sum of five hundred thousand dollars was appropriated from surplus revenues for the fiscal year one thousand nine hundred sixty-three—one thousand nine hundred sixty-four; and

WHEREAS, Said Legislature has been requested for an appropriation of two hundred thousand dollars from the surplus for the fiscal year one thousand nine hundred sixty-four—one thousand nine hundred sixty-five; and

WHEREAS, The Department of Commerce has been donated the sum of twenty thousand dollars by West Virginia's Empire Glass Company, Inc., a West Virginia Corporation, for participation in the New York World's Fair; and

WHEREAS, It is expected that other industries will donate to said World's Fair Building for participation at the World's Fair; and

WHEREAS, The Department of Commerce expects to receive certain revenues from the leasing of a restaurant and sale of souvenirs; and

WHEREAS, It now appears that much concern has been expressed about the total cost to the State of its participation in the New York World's Fair; therefore, be it

Resolved by the Legislature of West Virginia:

That there be created a special committee, consisting of three members of the House to be appointed by the Speaker thereof and three members of the Senate to be appointed by the President thereof, not more than two of those named by either ap-
pointing authority to be of the same political affiliation; that this committee be requested and directed to make a continuing audit of all receipts and disbursements of the Department of Commerce and the Advisory Committee Pavilion Fund pursuant to the Executive Order hereinbefore mentioned, in connection with West Virginia’s participation in the New York World’s Fair; that the Department of Commerce and the Advisory Committee be requested and directed to cooperate with and furnish to the special interim committee such information as the interim committee may request with respect to such receipts and disbursements; and that the said special interim committee so created be requested and directed to make a report thereon to the Legislature not later than the first day of the next regular session of the Legislature; and, be it

Further Resolved, That this committee is authorized to utilize the facilities and personnel of the Legislative Auditor’s Office and also to employ and fix reasonable compensation and expenses of such other technical and clerical assistance as may be required to perform the duties hereby conferred upon it, and to reimburse the members of the committee for their expenses in the performance of their duties hereunder, all such compensation and expenses to be paid from the appropriations under account number one hundred three of the budget act for joint expenses: Provided, That the special interim committee hereby created shall obtain the advance approval of the Joint Committee on Government and Finance before incurring any expense whatever.”

SENATE CONCURRENT RESOLUTION NO. 9
(By Mr. Carson, Mr. President)
[Adopted January 31, 1964.]

Continuing the commission studying the salaries of state officials and employees.

WHEREAS, House Concurrent Resolution No. 37, adopted by the Legislature in regular session, one thousand nine hundred sixty-three, created a commission to study salaries of state officials and employees and to make recommendations with respect thereto; and
WHEREAS, The commission was directed by said resolution to make its final report to the Legislature not later than January twentieth, one thousand nine hundred sixty-four; and

WHEREAS, The commission has not completed its studies and desires additional time within which to do so; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the salary study commission created by House Concurrent Resolution No. 37, aforesaid, is hereby authorized and directed to continue its studies and in doing so it shall have all the authority, powers, and responsibilities vested in it by said resolution: Provided, That the commission shall obtain the advance approval of the Joint Committee on Government and Finance for all subsequent expenses for consulting, advisory, clerical and other personnel; and, be it

Resolved further, That said commission shall make a final report to the Legislature not later than January twentieth, one thousand nine hundred sixty-five.

SENATE CONCURRENT RESOLUTION NO. 10
(Originating in the Senate Committee on the Judiciary)
[Adopted January 28, 1964.]

Requesting the Joint Committee on Government and Finance to make a comprehensive study of the adequacy of present legislative reference, research, study, bill drafting, and continuous law revision services for the committees and individual members of the Legislature during and in the interim between its sessions, for the purpose of determining and recommending to the Legislature whether these and other services now provided by various committees and agencies could be more adequately, economically, and efficiently provided by a legislative council similar to the legislative councils which have been established in a majority of the states.

WHEREAS, Legislative reference, research, study, bill drafting, and continuous law revision services are now provided the Legislature and its individual members by a number of com-
mittees and agencies, namely: The Joint Committee on Government and Finance established by rule eleven of the Joint Rules of the Senate and House of Delegates, the West Virginia Commission on Interstate Cooperation, the office of legislative auditor, and special committees of the Legislature appointed from time to time; and

WHEREAS, The Legislature of West Virginia is confronted with problems of increasing complexity, importance, and cost: and

WHEREAS, The individual members of the Legislature must have access to the most complete, objective, and up-to-date information to aid them in carrying out their responsibilities; and

WHEREAS, Thirty-nine states of these United States have established legislative councils in what the council of state governments has called the most significant development in the legislative service field in this decade; and

WHEREAS, These legislative councils are permanent, bipartisan, joint legislative research committees which meet periodically between sessions, consider a wide variety of problems expected to confront the next session, direct the research which bears on these problems, and develop solutions or alternative courses of action for the problems under study; and

WHEREAS, These legislative councils, usually composed exclusively of legislators, characteristically have continuing research staffs which make comprehensive, impartial analyses of public issues, reportedly at less cost and with greater awareness of impacts on other areas of state and local concern than sporadic interim research performed by miscellaneous committees; and

WHEREAS, Legislative council reports provide their legislatures with carefully documented and researched bases for deliberation and decision and thus facilitate more effective participation by the Legislature in formulating public policy:

WHEREAS, A legislative council may not only provide more continuity and less duplication in the legislative reference, research, and other services provided the Legislature and its individual members but may also provide for a more expeditious and efficient study of the fiscal problems which continually
confront the Legislature, a tighter and more economical control by the Legislature over state revenue and expenditures, a fuller participation of this State in the Council of State Governments and other interstate governmental organizations, and improved relations between the Legislature and the coordinate branches of state governments; and

WHEREAS, In actual operation, legislative councils generally have given needed added strength to their legislatures; and

WHEREAS, By use of open hearings on important issues and through wide distribution of reports and findings, legislative councils also provide information to the press and public; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance make a comprehensive study of the adequacy of present legislative reference, research, study, bill drafting, and continuous law revision services for the committees and individual members of the Legislature during and in the interim between its sessions, for the purpose of determining and recommending to the Legislature whether these and other services now provided by various committees and agencies could be more adequately, economically, and efficiently provided by a legislative council similar to the legislative councils which have been established in a majority of the states; and, be it

Resolved further, That the committee shall make its report to the Legislature not later than January thirteenth, one thousand nine hundred sixty-five, and shall include in its report findings and recommendations and drafts of any proposed legislation which shall be necessary to carry the recommendations of the committee into effect.

SENATE CONCURRENT RESOLUTION NO. 18
(Originating in the Senate Committee on Rules)

[Adopted February 5, 1964.]

Directing the Joint Committee on Government and Finance and the Commission on Interstate Cooperation to review outstanding contracts of the Public Lands Corporation and
the Department of Natural Resources and procedures followed in their negotiation and execution, to determine whether such contracts are in compliance with existing laws of the State, and to provide for a report thereon to the Legislature.

WHEREAS, The intent and method of negotiation and execution of certain contracts by the Public Lands Corporation and the Department of Natural Resources have been called into question; and

WHEREAS, It is believed in the best interest of the State to review outstanding contracts and procedures followed in the negotiation and execution of existing contracts, to determine whether or not such contracts are in compliance with existing laws, and to determine the possible desirability of enacting new legislation to strengthen and improve contract procedures: therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance and the Commission on Interstate Cooperation are hereby directed to review outstanding contracts of the Public Lands Corporation and the Department of Natural Resources and procedures followed in their negotiation and execution, to determine whether or not such contracts are in compliance with existing laws of the State of West Virginia, and to make a report thereon, including drafts of recommended legislation, to the Legislature not later than the first day of the next regular session of the Legislature; and, be it

Resolved further, That the expenses necessary to make such study and to submit such report be paid from the legislative appropriations made to the Joint Committee on Government and Finance and the Commission on Interstate Cooperation.

SENATE CONCURRENT RESOLUTION NO. 19
(Originating in the Senate Committee on Rules)
[Adopted February 6, 1984.]

Directing the Joint Committee on Government and Finance to review, examine and study the plans, specifications and
suggested locations of any project or projects proposed by the State Office Building Commission and requiring a report thereon.

WHEREAS, Chapter one hundred seventy-one, Acts of the Legislature, regular session, one thousand nine hundred sixty-three, provides that no bonds or other obligations shall be issued or incurred by the State Office Building Commission under the provisions of article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and that no contracts for the erection of any new project shall be entered into by the commission, unless and until the plans, specifications and location of any new or additional project shall be first submitted to the Legislature for its approval; and

WHEREAS, By letter dated January ten, one thousand nine hundred sixty-four, addressed to the members of the Senate and House of Delegates, the Honorable Truman E. Gore, Commissioner of the Department of Finance and Administration and Secretary of the State Office Building Commission, informed the Legislature that the State Office Building Commission had prepared certain plans, specifications and proposals for the construction of a new state office building, and requested the Legislature to examine same, and if such plans, specifications and proposals met with the approval of the Legislature, to enact appropriate legislation evidencing such approval so as to permit construction of a new state office building; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance is hereby directed to review, examine and study any and all plans, specifications and proposed locations of any new or additional projects of the State Office Building Commission, and to recommend to the Legislature whether such plans, specifications and proposed locations should receive legislative approval in accordance with said chapter one hundred seventy-one, Acts of the Legislature, regular session, one thousand nine hundred sixty-three; and, be it

Resolved further, That said Joint Committee on Government
and Finance shall report its findings and recommendations to the Legislature at the first regular, extraordinary or special session, as the case may be, held immediately succeeding the formulation of such findings and recommendations.

SENATE CONCURRENT RESOLUTION NO. 20
(Originating in the Senate Committee on Finance)
[Adopted February 6, 1964.]

Directing the Joint Committee on Government and Finance and the Commission on Interstate Cooperation to make a study of the advisability of the Legislature authorizing the West Virginia Board of Education to construct, erect, acquire and improve swimming pools, dining halls, cottages and such other building or buildings or recreational facilities as it shall deem necessary and beneficial for the proper conduct and management of the camp and conference center established by section sixteen, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to finance such construction, erection, acquisition and improvement by the issuance of revenue bonds of the State of West Virginia payable solely from the revenues derived from the operation of said camp and conference center, and to provide for a report thereon to the Legislature.

WHEREAS, Engrossed House Bill No. 63 introduced and passed by the House of Delegates during the regular session of the Legislature, one thousand nine hundred sixty-four, would authorize the West Virginia Board of Education to construct, erect, acquire and improve swimming pools, dining halls, cottages and such other building or buildings or recreational facilities as the board should deem necessary and beneficial for the proper conduct and management of the camp and conference center established by section sixteen, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and

WHEREAS, Said Engrossed House Bill No. 63 would authorize the West Virginia Board of Education to finance such construction, erection, acquisition and improvement by the issuance of revenue bonds of the State of West Virginia payable
solely from the revenues derived from the operation of said camp and conference center; and

Whereas, A study should be conducted to determine the advisability and feasibility of financing such developments by the issuance of revenue bonds payable from such revenues prior to the enactment of legislation authorizing the West Virginia Board of Education to issue such revenue bonds; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance and the Commission on Interstate Cooperation are hereby directed to study the advisability of the Legislature authorizing the West Virginia Board of Education to construct, erect, acquire and improve swimming pools, dining halls, and such other building or buildings or recreational facilities as the board shall deem necessary and beneficial for the proper conduct and management of the camp and conference center established by section sixteen, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to finance such construction, erection, acquisition and improvement by the issuance of revenue bonds of the State of West Virginia payable solely from the revenues derived from the operation of said camp and conference center, and to make a report thereon, including drafts of recommended legislation, to the Legislature not later than the first day of the next regular session of the Legislature; and, be it

Resolved further, That the expenses necessary to make such study and to submit such report be paid from the legislative appropriations made to the Joint Committee on Government and Finance and the Commission on Interstate Cooperation.
AN ACT to amend and reenact sections one and two, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article two by adding thereto a new section, designated section four, all relating to the composition of the state senate and the house of delegates, the division of the state into senatorial districts, the designation of senatorial districts and delegate districts and the apportionment of members of the house of delegates among the counties and delegate districts, and providing a severability clause for the provisions and sections of said article two.

WHEREAS, Chapter one hundred fifty-eight, acts of the Legislature, regular session, one thousand nine hundred sixty-three, purported to repeal article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and purported to enact in lieu thereof a new article two of said chapter, the first section of said article two relating to the division of the state into senatorial districts, the second section of said article two relating to the apportionment of membership of the house of delegates, and the third section of said article two relating to the apportionment of the members of the house of representatives to which this state is entitled among the several counties of the state; and

WHEREAS, By order entered of record on February seven, one thousand nine hundred sixty-four, in the case of C. Donald Robertson, et al., v. Lewis A. Hatcher, et al., No. 12306, the West Virginia supreme court of appeals declared the apportionment of the membership of the house of delegates pur-
ported to be made by said chapter one hundred fifty-eight, acts of the Legislature, to be clearly in violation of sections six and seven, article six of the West Virginia constitution and, therefore, unconstitutional, void and of no force and effect; and

WHEREAS, By said order, the West Virginia supreme court of appeals declared that there is no constitutional inhibition against the designation of Kanawha county as the situs of both the eighth and seventeenth senatorial districts, as provided by said chapter one hundred fifty-eight, acts of the Legislature; and

WHEREAS, By said order, the West Virginia supreme court of appeals declared that the validity of Kanawha county as the situs of both the eighth and seventeenth senatorial districts was the only question presented in said styled case relative to the division of the state into senatorial districts as provided by said chapter one hundred fifty-eight, acts of the Legislature; and

WHEREAS, By said order, the West Virginia supreme court of appeals declared the said chapter one hundred fifty-eight, acts of the Legislature, to be unconstitutional in its entirety because the provisions thereof were not severable; and

WHEREAS, In the written opinion of the attorney general, dated February ten, one thousand nine hundred sixty-four, addressed to the Honorable Howard Carson, President of the Senate, said order of the West Virginia supreme court of appeals leaves as valid and subsisting law, section three, article two, chapter one of said code, as last amended by chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred sixty-one, relating to the apportionment of the state's membership in the house of representatives, thereby obviating any necessity to amend and reenact section three or to make any provision herein with respect to the announcements of candidacy for nomination for the house of representatives in the primary election, to be held in May, one thousand nine hundred sixty-four; now, therefore,

Be it enacted by the Legislature of West Virginia:

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

**Article 2. Apportionment of Representation.**

Section 1. Senatorial districts; announcements of candidacy for nomination for state senate in 1964 primary election validated.

Section 2. Apportionment of membership of house of delegates; announcements of candidacy for year 1964 validated.

Section 4. Severability of provisions of article.

Section 1. Senatorial Districts; Announcements of Candidacy for Nomination for State Senate in 1964 Primary Election Validated.—The state shall consist of seventeen senatorial districts as follows:

1. The counties of Brooke, Hancock and Ohio shall constitute the first senatorial district;
2. The counties of Doddridge, Marshall, Tyler and Wetzel shall constitute the second senatorial district;
3. The counties of Calhoun, Pleasants, Ritchie, Wirt and Wood shall constitute the third senatorial district;
4. The counties of Clay, Jackson, Mason, Putnam and Roane shall constitute the fourth senatorial district;
5. The counties of Cabell and Wayne shall constitute the fifth senatorial district;
6. The counties of McDowell and Mingo shall constitute the sixth senatorial district;
7. The counties of Boone, Lincoln and Logan shall constitute the seventh senatorial district;
8. The county of Kanawha shall constitute the eighth senatorial district;
9. The counties of Raleigh and Wyoming shall constitute the ninth senatorial district;
10. The counties of Mercer, Monroe and Summers shall constitute the tenth senatorial district;
11. The counties of Fayette and Greenbrier shall constitute the eleventh senatorial district;
12. The counties of Braxton, Nicholas, Pendleton, Pocahontas, Randolph and Webster shall constitute the twelfth senatorial district;
13. The counties of Gilmer, Harrison and Lewis shall constitute the thirteenth senatorial district;
The counties of Marion and Monongalia shall constitute the fourteenth senatorial district;
The counties of Barbour, Grant, Preston, Taylor, Tucker and Upshur shall constitute the fifteenth senatorial district;
The counties of Berkeley, Hampshire, Hardy, Jefferson, Mineral and Morgan shall constitute the sixteenth senatorial district; and
The county of Kanawha shall constitute the seventeenth senatorial district.
Each of the said districts shall have two senators, and, regardless of the changes in district lines made by this act, the senators elected at the general election of one thousand nine hundred sixty and at the general election of one thousand nine hundred sixty-two shall continue to hold their seats as members of the senate for the term, and as representatives of the senatorial districts, for which each thereof, respectively, was elected.
One senator shall be nominated and elected at the general election of one thousand nine hundred sixty-four from each of the senatorial districts hereinabove described for a term of four years, and one shall be nominated and elected from each of the said senatorial districts biennially thereafter for a term of four years: Provided, That at the general election to be held in the year one thousand nine hundred sixty-four there shall be two senators elected in the seventeenth senatorial district, as herein designated, one of whom shall be nominated and elected for a term of two years and one of whom shall be nominated and elected for a term of four years, and biennially thereafter one senator shall be elected in said seventeenth senatorial district for a term of four years.
Inasmuch as the designation and arrangement of the senatorial districts provided herein are identical with the designation and arrangement of the senatorial districts set forth in chapter one hundred fifty-eight, acts of the Legislature, regular session, one thousand nine hundred sixty-three, under which chapter persons filed their announcements of candidacy for nomination for the state
senate in the primary election, to be held in May, one thousand nine hundred sixty-four, and consistent with the provisions of Enrolled House Bill No. 53 enacted at the regular session of the Legislature for the year one thousand nine hundred sixty-four, an announcement of candidacy for membership in the state senate from a designated senatorial district which was filed on or before February one, one thousand nine hundred sixty-four, under the provisions of section seven, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, shall be considered a valid and sufficient announcement of candidacy for the state senate from the identically designated senatorial district established by this act.

Sec. 2. Apportionment of Membership of House of Delegates; Announcements of Candidacy for year 1964 Validated.—The house of delegates shall consist of one hundred members, who shall be apportioned as follows:

The counties of Berkeley and Morgan shall form the first delegate district and elect two delegates.

The counties of Grant and Tucker shall form the second delegate district and elect one delegate.

The counties of Hardy and Pendleton shall form the third delegate district and elect one delegate.

The counties of Greenbrier and Pocahontas shall form the fourth delegate district and elect two delegates.

The counties of Doddridge and Tyler shall form the fifth delegate district and elect one delegate.

The counties of Pleasants and Ritchie shall form the sixth delegate district and elect one delegate.

The counties of Calhoun, Gilmer and Wirt shall form the seventh delegate district and elect one delegate.

The counties of Barbour, Braxton, Clay, Hampshire, Jackson, Jefferson, Lewis, Lincoln, Mason, Mineral, Monroew, Nicholas, Preston, Putnam, Randolph, Roane, Summers, Taylor, Upshur, Webster and Wetzel shall have one delegate each.

The counties of Boone, Brooke, Hancock, Marshall, Mingo, Wayne and Wyoming shall have two delegates each.
The counties of Fayette, Logan, Marion and Monongalia shall have three delegates each.

The counties of Harrison, McDowell, Mercer, Ohio, Raleigh and Wood shall have four delegates each.

The county of Cabell shall have six delegates.

The county of Kanawha shall have fourteen delegates.

Consistent with the provisions of Enrolled House Bill No. 53 enacted at the regular session of the Legislature for the year one thousand nine hundred sixty-four, an announcement of candidacy for membership in the house of delegates which was filed on or before February one, one thousand nine hundred sixty-four, under the provisions of section seven, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, shall be considered a valid and sufficient announcement of candidacy for the house of delegates from the county in which the candidate resided at the time said announcement was filed, and, in the event such county is by this section made a part of a delegate district, from the delegate district of which the candidate’s county of residence at the time of such filing is made a part.

Sec. 4. Severability of Provisions of Article.—If section one, two or three of this article or any part of any one or more of said sections is declared invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections or provisions of this article or the article in its entirety.

CHAPTER 2

(House Bill No. 4—Originating in the House Committee on the Judiciary)

(Passed February 14, 1964; in effect from passage. Approved by the Governor.)

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; to amend and reenact sections four, seven, eight, thirteen and twenty, article five of said chapter; and to amend and reenact section five, article ten of said chapter, relating to the establishment, duties, functioning and election of delegate district executive committees and to the filling of vacancies in the membership of the house of delegates where delegate districts are involved.

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; and that sections four, seven, eight, thirteen and twenty, article five of said chapter be amended and reenacted; and that section five, article ten of said chapter be amended and reenacted, all to read as follows:


Section 9. Political Party Committees; How Composed; Organization.—At the May primary election in the year one thousand nine hundred sixty-four and in every fourth year thereafter, the voters of each political party in each senatorial district shall elect two male and two female members of the state executive committee of the party. In senatorial districts containing two or more counties, not more than two such elected committee members shall be residents of the same county. The committee, when convened and organized as herein provided, shall appoint three additional members of the committee from the state at large.

At such primary election, the voters of each political party in each county shall elect one male and one female member of the party’s executive committee of the congressional district, of the senatorial district in which such county is situated and of the delegate district in which such county is situated if such county be situated in a delegate district. At the same time such voters in each magisterial district of the county shall elect one male and one female member of the party’s county executive committee and, in any county containing a city of ten thou-
sand or more in population, such voters of each ward of such city within the county shall elect one male and one female member of such county party executive committee in addition to the members thereof chosen from the magisterial district or districts in which such city is situated.

All members of executive committees, selected for each political division as herein provided, shall reside within the county, district, or ward from which chosen.

The term of office of all members of executive committees so elected shall begin on the first day of June, following said May primary, and shall continue for four years thereafter and until their successors are elected and qualified. Vacancies in the state executive committee shall be filled by the members of the committee for the unexpired term. Vacancies in the party's executive committee of a congressional district, senatorial district, delegate district or county shall be filled by the party's executive committee of the county in which such vacancy exists, and shall be for the unexpired term.

As soon as possible after the first day of June, following the election of the new executive committees, as herein provided, they shall convene within their respective political divisions, on the call of the chairman of corresponding outgoing executive committees, or by any member of the new executive committee in the event there is no corresponding outgoing executive committee, and proceed to select a chairman, a treasurer, and a secretary, and such other officers as they may desire, each of which officers shall for their respective committees perform the duties that usually appertain to such offices.

Article 5. Primary Elections and Nominating Procedures.

Section 4. Nomination of candidates in primary elections.—At each primary election, the candidate or candidates of each political party for all offices to be filled at
the ensuing general election by the voters of the entire
state, of each congressional district, of each state sen-
atorial district, of each delegate district, of each judicial
circuit of West Virginia, of each county, and of each
magisterial district in the state shall be nominated by
the voters of the different political parties, except that
no presidential elector shall be nominated at a primary
election.

In primary elections a plurality of the votes cast shall
be sufficient for the nomination of candidates for office.
Where only one candidate of a political party for any
office in a political division, including party committee-
men and delegates to national conventions, is to be
chosen, the candidate receiving the highest number of
votes therefor in the primary election shall be declared
the party nominee for such office. Where two or more
such candidates are to be chosen in the primary election,
the candidates constituting the proper number to be so
chosen who shall receive the highest number of votes
cast in the political division in which they are candidates
shall be declared the party nominees and choices for such
office, except that candidates for the office of commis-
ioner of the county court shall be nominated and elected
in accordance with the provisions of section twenty-three
of article eight of the constitution of this state and that
members of county boards of education shall be elected
at primary elections in accordance with the provisions
of section six of this article.

In case of tie votes between candidates for party nom-
inations or elections in primary elections, the choice of
the political party shall be determined by lot by the exe-
cutive committee of the party for the political division
in which such persons are candidates.

Sec. 7. Filing Announcements of Candidacies; Re-
quirements.—Any person who is eligible to hold an off-
ice (including that of member of any political party
executive committee) shall file with the secretary of
state, if it be an office to be filled by the voters of
more than one county, or with the clerk of the cir-
cuit court, if it be for an office to be filled by the
voters of a county or subdivision less than a county,
a certificate declaring himself a candidate for the nomi-
nation for such office; which certificate shall be in form
or effect as follows:

I, ________________, hereby certify that I am a candidate
for the nomination for the office of ________________ to
represent the ______________ party, and desire my name
printed on the official ballot of said party to be voted at
the primary election to be held on the ______ day of
______________, 19____; that I am a legally qualified voter
of the county of ______________, state of West Virginia;
that my residence is number ______ of ____________
street in the city (or town) of ______________ in _______
county in said state; that I am eligible to hold the said
office; that I am a member of and affiliated with said
political party; that I am a candidate for said office in
good faith.

______________________________
Candidate
Signed and acknowledged before me this ____ day of
_______________, 19____.

______________________________
Signature and official title of
person before whom signed.

Such announcement shall be signed and acknowledged
by the candidate before some officer qualified to admin-
ister oaths, who shall certify the same.

No person may be a candidate for nomination for office
in any political party unless it be openly known that
such person is a bona fide member of such party.

Such certificate shall be filed with the secretary of
state or the clerk of the circuit court, as the case may
be, not earlier than the first Monday in January next
preceding the primary election day, and not later than
the first Saturday of February next preceding the pri-
mary election day, and must be received before mid-
night, eastern standard time, of that day or, if mailed,
shall be postmarked before that hour: Provided, That
during the calendar year of one thousand nine hundred
sixty-four, in event (a) that section one and section two,
or either of them (in whole or in part), of article two of
chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, said article two having been enacted by chapter one hundred fifty-eight of the acts of the Legislature of West Virginia, for the year one thousand nine hundred sixty-three, regular session, relating to the apportionment of membership in the Legislature, are declared unconstitutional by the supreme court of appeals of West Virginia, and (b) that thereafter the Legislature enacts legislation reapportioning said Legislature prior to the primary election for the year one thousand nine hundred sixty-four the announcements of candidacies for membership in the state senate and membership in the house of delegates which were properly filed on or before February one, one thousand nine hundred sixty-four, by any persons under the provisions of this section, shall be considered valid and sufficient announcements of candidacies for such offices in the counties or districts wherein such candidates reside at the time said certificates of candidacies were filed for membership in the Legislature representing the particular counties, delegate districts or senatorial districts for which filed, as the case may be, or which are created in such apportionment legislation as may hereafter be adopted during the year one thousand nine hundred sixty-four, prior to the primary election: Provided, however, That in event such apportionment legislation is hereafter adopted during the year one thousand nine hundred sixty-four prior to the primary election wherein delegate districts are established, the circuit clerks of all counties within such established delegate districts shall immediately transfer all certificates of candidacy for membership in the house of delegates, together with the filing fees therefor, to the secretary of state: Provided further, That notwithstanding the provisions of section nine, article five of this chapter and any other provision of this chapter requiring an earlier date or time, the secretary of state shall arrange the names of all candidates who have filed announcements with him and who are entitled to have their names printed on any political party ballot for the offices of state senator and member of the house of delegates and shall certify the same to the several
clerks of the circuit courts prior to the week next following the second Saturday in the month of March, in the year one thousand nine hundred sixty-four.

Notwithstanding the provisions of the preceding paragraph of this section, for the primary election in the year one thousand nine hundred sixty-four any person who is eligible to be a member of a party's delegate district executive committee and who desires to be a candidate therefor shall file with the clerk of the circuit court of the county of which he is a resident, a certificate declaring himself a candidate for election to his party's executive committee of the delegate district of which the county of his residence is a part not later than the twenty-ninth day of February, one thousand nine hundred sixty-four, and said certificate must be received before midnight, eastern standard time, of that day or, if mailed, shall be postmarked before that hour.

Sec. 8. Filing Fees and Their Disposition.—Every person who becomes a candidate for nomination for, or election to, office in any primary election, shall, at the time of filing the certificate of announcement as required in this article, pay a filing fee as follows:

(a) A candidate for president of the United States, vice president of the United States, for United States senator, for member of the United States house of representatives, for governor and for all other state elective offices shall pay a fee equivalent to one per cent of the annual salary of the office for which the candidate announces;

(b) A candidate for the office of judge of a circuit court and judge of any court of record of limited jurisdiction shall pay a fee equivalent to one per cent of the total annual salary of the office paid from any and all sources for which the candidate announces;

(c) A candidate for member of the house of delegates shall pay a fee of fifteen dollars, and a candidate for state senator shall pay a fee of thirty dollars;

(d) A candidate for sheriff, prosecuting attorney, circuit clerk, county clerk, assessor, member of the county
court and member of the county board of education shall pay a fee equivalent to one per cent of the annual salary of the office for which the candidate announces: Provided, however, That the fee in no case shall be less than five dollars. A candidate for any other county office shall pay a fee of five dollars;

(e) A candidate for justice of the peace in districts having a population of five thousand or less shall pay a fee of ten dollars; in districts having a population of more than five thousand and not more than twenty-five thousand, fifteen dollars; and in districts having more than twenty-five thousand population, each candidate shall pay a fee of twenty-five dollars;

(f) A candidate for constable in districts having a population of five thousand or less shall pay a fee of five dollars; in districts having a population of more than five thousand and not more than twenty-five thousand, ten dollars; and in all other districts fifteen dollars;

(g) Delegates to the national convention of any political party shall pay the following filing fees:

A candidate for delegate-at-large shall pay a fee of twenty dollars; and a candidate for delegate from a congressional district shall pay a fee of ten dollars;

(h) Candidates for members of political executive committees and other political committees shall pay the following filing fees:

A candidate for member of a state executive committee of any political party shall pay a fee of ten dollars; a candidate for member of a county executive committee of any political party shall pay a fee of one dollar; and a candidate for member of a congressional, senatorial or delegate district committee of any political party shall pay a fee of one dollar.

Candidates filing for an office to be filled by the voters of one county shall pay the filing fee to the clerk of the circuit court, and candidates filing for an office to be filled by the voters of more than one county shall pay the filing fee to the secretary of state at the time of filing their certificates of announcement, and no certificate of announcement shall be received until the filing fee is paid.
All moneys received by such clerk from such fees shall be credited to the general county fund. Moneys received by the secretary of state from fees paid by candidates for offices to be filled by all the voters of the state shall be deposited in a special fund for that purpose and shall be apportioned and paid by him to the several counties on the basis of population, and that received from candidates from a district or judicial circuit of more than one county shall be apportioned to the counties comprising the district or judicial circuit in like manner. When such moneys are received by sheriffs, it shall be credited to the general county fund.

Sec. 13. Form and Contents of Ballots.—Official primary ballot shall contain at the left of each column of names of candidates, a perpendicular column, and shall be so printed as to leave a square at the left of each name on the ballot.

On such primary ballot, the names of candidates for president of the United States, for United States senator, for representative in congress, and for delegates to the national convention of the party, shall be placed in the first column of candidates; the names of candidates for all state offices, and all other offices to be filled by the voters of a political division greater than a county, including the state executive committee, in the second column; the names of all candidates for county offices, including members of the house of delegates and congressional, senatorial, and delegate district executive committees, shall be placed in the third column; and the names of all candidates for office in the magisterial districts shall be placed in the fourth column.

The face of every primary election ballot shall conform as nearly as practicable to that used at the general election.

The secretary of state, or the circuit court clerk, as the case may be, shall arrange the names of the candidates to be printed on the ballot in alphabetical order, according to the surname, under the title of the respective offices upon the ballot.

A separate ballot, in connection with a primary elec-
tion, for election of members of county board of edu-
cation, shall be printed in bold type, under the caption,  
“Nonpartisan Ballot for Election of Members of the 
County Board of Education.” The names
of the candidates for election to the county board of edu-
cation, and the number of candidates for which each voter 
is entitled to vote shall be printed beneath the caption,  
without reference to political party affiliation, and with-
out designation as to a particular term of office.

In printing each set of ballots the position of the names
of the candidates shall be changed in each office division
as many times as there are candidates in that office divi-
sion. As nearly as possible an equal number of ballots
shall be printed after each change. In making the change
of position, the printer shall take the line of type con-
taining the first name in the office division concerned and
place it at the bottom of the list of names in that division
and move up the column so that the name that before
was second shall be first after the change. After the
ballots are printed they shall be kept in separate piles,
one pile for each change in position, and shall then be
gathered by taking one from each pile. Sample ballots
shall be in the same form as the official ballot, but the
order of the names thereon need not be alternated.

All ballots used in primary elections shall be printed on
paper conforming as nearly as practicable in weight, tex-
ture, and color to the samples furnished by the secretary
of state, and the paper shall be sufficiently thick so that
the printing cannot be discernible from the back. On the
back of the ballot shall be printed in black ink, and in
plain legible, black face pica type, the name of the politi-
cal party as contained in the heading or “Nonpartisan
Board of Education,” as the case may be, followed by
the word “ballot.” Under this designation shall be
printed two blank lines followed by the words “poll
clerks.”

Sec. 20. Election Contests and Court Review.—Any
candidate for nomination for or election to an office to
be filled by the voters of the state or any political sub-
division thereof or any candidate for membership on any
political party executive committee, may contest the
primary election before the county court of the county
in which any primary election procedures, practices or
results may be in issue. The procedure in such case shall
be the same as that governing the contest of a general
election by candidates for county offices or offices in
magisterial districts. The decision of the county court
upon such contest may be reviewed by the circuit court
of the county and by the supreme court of appeals of
the state. Wherever practicable, the circuit court, on
review, may, by order entered of record, consolidate and
hear together any such primary election cases arising in
one or more counties of the circuit, and the supreme
court of appeals, on further review, may likewise con-
solidate and hear together any such cases whenever con-
sidered practicable by the court so to do.

Any action of a political party executive committee
in the discharge of any of the duties imposed upon such
committee by this article, or of any board of election
officials in conducting and ascertaining the result of the
primary election, or of any board of canvassers in can-
vassing and certifying the result of the primary election
for the county, may be reviewed by the circuit court of
the county, upon the petition of any candidate, political
committeeman or delegate voted for at such primary and
affected adversely by the action of such committee,
board of election officials, or board of canvassers. From
the judgment of the circuit court in any such proceeding,
an appeal shall lie to the supreme court of appeals of
the state.

Any such contest, or petition for review, of a candidate
for a nomination not finally determined within ten days
next preceding the date of the next election after the
primary, or of a candidate for delegate to any conven-
tion within ten days next preceding the date fixed for
holding the convention, shall stand dismissed, and the
person shown by the face of the returns of the primary
election to be nominated for any office shall be entitled
to have his name printed upon the regular ballot to be
voted at the election, and the person shown upon the
face of the returns to have been elected as a delegate to
Article 10. Filling Vacancies.

Section 5. Vacancies in State Legislature.—Any vacancy in the office of state senator or member of the house of delegates shall be filled by appointment by the governor, in each instance from a list of three legally qualified persons submitted by the county party executive committee in the case of a member of the house of delegates who is elected from a county that is not situated in a delegate district, by the party executive committee of the delegate district in the case of a member of the house of delegates who is elected from such delegate district, and by the party executive committee of the state senatorial district in the case of a state senator, of the party with which the person holding the office immediately preceding the vacancy was affiliated, and of the county, delegate district or state senatorial district, respectively, in which he resided at the time of his election or appointment. The appointment to fill a vacancy in the house of delegates shall be for the unexpired term. If the unexpired term in the office of the state senator be for less than two years and two months, the appointment shall be for the unexpired term. If the unexpired term be for a period longer than two years and two months, the appointment shall be until the next general election and until the election and qualification of a successor to the person appointed, at which general election the vacancy shall be filled by election for the unexpired term. Notice of an election to fill a vacancy in the office of state senator shall be given by the governor by proclamation and shall be published once a week for two successive weeks prior to the date of the election, in two newspapers having the largest and second largest circulation, and of opposite party politics, published in each county in the senatorial district. Nominations for candidates to fill such vacancy shall be made in the manner prescribed for nominating a candi-
date to fill a vacancy in the office of governor to be voted
for at a general election. The state senatorial district ex-
cutive committee of the political party shall discharge
the duties incident to state senator nominations devolving
upon the party state executive committee in nominating
a candidate for a state office.
DISPOSITION OF BILLS ENACTED

Regular Session, 1963

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.

HOUSE BILLS

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